A THESIS

ON

THE LEGAL RIGHTS OF WOMEN

Under Different Communal Laws in Vogue in India

BY

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FOREWORD

THE only redeeming feature of the futile political movement carried on by the country under the leadership of Mr Gandhi, for the last ten years, has been the awakening of Indian Womanhood. It is only to be hoped that this awakening is not merely spasmodic and temporary. This hope is sustained by the fact that owing to intensive exploitation of the country's economic resources by the Indian and foreign capitalists on the one hand and by a hopelessly extravagant government on the other, India has struck the rock-bottom of economic misery and hence it is not possible for the middle-class woman to continue in her comparatively comfortable, parasitic position. While the working-class women are learning hard lessons of economic and personal independence, their sisters on the higher rungs of the social ladder are imbibing emancipation psychology—thanks to the economic stress, the various emancipatory struggles carried on by the various sections of society and Western education and culture. It is hoped, therefore, that this thesis on "The Legal Rights of Women Under Different Communal Laws in Vogue in India" is coming out at a most opportune juncture.

Nobody would gainsay that the position of the Indian woman from the legal point of view is anything but satisfactory. We have a veritable labyrinth of laws, personal and otherwise, of various communities making the legal position of women extremely embarrassing. It is therefore desirable that the awakened woman, whatever her religious or communal persuasion whether Hindu, Muslim, Parsi, Christian, Jain or Buddhist, should acquaint herself with her legal rights and liabilities and how she stands in the eyes of law with regard to her contractual obligations, restitution of conjugal right, judicial separation, nullification of marriages, divorce, remarriage, maintenance, inheritance, succession, etc., matters which are of vital

importance to her This thesis, being the prize essay, written for the Civil Marriage Association of Bombay, is nearly an exhaustive and complete survey of these questions and so it is calculated to present in a non technical and lucid style a vivid picture, to the Indian women, of the numerous disabilities and obstacles that baulk their way to progress and social independence They will, thus, have an opportunity of knowing exactly what they have got to fight against if they are to recreate a united and strong Womanhood sharing equally with men in all walks of human life and activity

The Indian Social Reformers also, impatient to remove the social paralysis that Indian body politic is suffering from will find this thesis a valuable guide showing them the exact extent of social reform that they have got to carry out And it is hoped that this thesis will serve as a very useful handbook of reference to the lawyers who are too often called upon to defend the rights of women in a Court of Law

Thanks are due from all those who will avail of the services of this thesis to the Civil Marriage Association of Bombay for calling for such an essay at such an opportune juncture and especially to the author who has taken great pains to collect the facts which are lying scattered in numerous Law books and present them in a simple elegant and easily intelligible style It is only to be hoped that this thesis will be a precursor of a still more intensive and extensive study of the subject

PUBLISHERS

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"THE LEGAL RIGHTS OF WOMEN UNDER DIFFERENT COMMUNAL LAWS IN VOGUE IN INDIA"

I

LEGISLATION IN INDIAN STATES & BRITISH INDIA

THE legal position of Indian women in general and the Hindu and the Mahomedan women in particular, is much inferior to that of their sisters in the West, where after an incessant agitation and a continuous struggle extending over a number of centuries, they are tending, by now, to become almost the equal of men Equality of status and of rights between males and females is the triumph the modern legislation has achieved almost all over the world except in certain Asiatic countries, India, unfortunately, being one of them. In this country, women far from being their equal, are practically looked upon as inferior beings, always working under disabilities and ever associated with disqualifications rather than with rights And this general attitude towards our women is fully reflected in their legal rights, i.e., rights recognised by law and enforceable with the aid of Courts of Law The Hindu and the Mahomedan Laws, governing over nine-tenth of the Indian population, are not only in actual practice anything but satisfactory, but are unjust and inequitable so far as women under these laws are concerned The study of these laws will amply convince a student of the appalling obsequious state of these women The conservative mentality averse to any innovation in social reform of both these communities and the British Government's safety-first policy of "non-interference" in social matters of the people of this country, are equally to be blamed for this unhappy condition. However, it is now high time that we should take stock of the legal rights which our women enjoy under their respective

communal laws in vogue and bring them in line with those of their fellow sisters in other parts of the civilized World

The spread of Western education and culture in our country has brought with it the consciousness of the deplorable condition of our women and it is this awakened consciousness of both the sexes that has now begun to work in removing the legal disabilities and to raise the social status of our womenfolk Our social reformers and those who yearn for the complete emancipation of the fair sex have fully realised that if society is to make any real progress, if it wants to exist and come in line with other more civilized and cultured societies, it cannot afford to neglect its women and leave them in lurch any longer Nothing can do them any good so long as they are denied those rights, in respect of unqualified and absolute proprietary ownership and personal independence It is only the establishment of the equality of rights and opportunities between both the sexes that will help the fair sex in their attempt of self development This fact being realised and recognised now, attempts are being made both in the legislature and outside inspite of the tremendous opposition from the orthodox sections of the various communities to bring about the uplift of the most oppressed better half of mankind—women—by removing and doing away with the legal disabilities they (women) are labouring under and to get their just and equitable rights recognised in the legal jurisprudence of their respective communities.

Even some progressive Indian States have also realised the needs of the changing time and in turn have introduced and are further thinking of introducing certain legislation which will give their women some rights which they were not enjoying before and which are not given, still, to women in British India The States of Mysore, Cochin Travancore and Baroda seem to give a lead in this direction We shall deal with these pieces of legislation in the proper place in this thesis At

present suffice it to say that these Native States have gone ahead of British India in matters of social reform, thus proving that the non-interference of Government in British India has retarded reform and kept the people in a stagnant out-of-date civilization entirely inconsistent with the fast-changing economic environments of the world at large.

II

THE VARIOUS COMMUNITIES & THE SOURCES OF THEIR LAWS

THIS thesis, being an attempt to give a thorough and complete idea as far as possible of the legal rights of women of the different main communities, it is worth our purpose to know in short, what are the main communities, where they predominantly inhabit and what personal laws they are governed by The chief communities of India are (1) the Hindu (2) the Sikh (3) the Jain (4) the Buddhist, (5) the Mahomedan (6) the Christian, (7) the Parsee and (8) the group of various tribal communities Although the population of India is divided into numerous castes and sub castes all of them fall into one or the other of the above eight groups. As regards the percentage of their number it can be said broadly that the Hindu community tops the list, being 68% of the total population of the Indian Empire, the Mahomedan community ranks next, being 22% the Buddhist 3%, the tribal communities 3% the Christian something more than 1% the Sikh 1%, the Jain the Parsee and a fraction of the Jew, comprise the remaining percentage

The Hindus largely predominate in the centre and South of India and in the Madras Presidency where they are no less that 89% of the total population They are in majority in Assam Bihar and Orissa the United Provinces the Central India tracts Rajputana and Bombay Presidency The Mahomedans monopolise the North West Frontier Province Baluchistan and Kashmir and are considerably in excess in the Punjab and Eastern Bengal and Sind Those who are classed as following tribal religions are chiefly found in Bihar and Orissa the Central Provinces and Assam The Buddhists are almost entirely confined to Burma where they comprise 85% of the total population The Sikhs are localised in the Punjab and the Jains in Rajputana Ajmer Merwara and neighbouring States of Gujrat and Kathiawar More than three fifth of the total number of Indian Christians reside in

South India including the Hyderabad State. The remaining are scattered over the country. The Parsee and the Jews are residents of the Bombay Presidency, chiefly in the City of Bombay.

We shall, now, turn our attention, for a while, before we come to the subject matter proper, to the different communal laws in vogue which govern these communities The Hindus are governed generally by the Hindu Law as it is modified and supplemented to-day in certain respects, viz, by the Hindu Widows' Remarriage Act, 1856, which legalizes the remarriage of Hindu widows, etc. But whenever a clear and ancient custom is established, it will obtain the force of law though it is in derogation to the general rules of the Hindu Law. Such custom must not be opposed to morality or public policy and it must not be expressly forbidden by the legislature. The Indian courts recognise the dictum "Under the Hindu system of law, clear proof of usage will outweigh the written text of the law." Thus, though divorce is not recognised by the general Hindu law, those castes who allow this custom to prevail among them do so on the strength of the above dictum. Further, the Hindu law applies (1) to Hindus not only by birth, but by religion also, (2) to Jains, Sikhs and Nambudri Brahmans except so far as such law is varied by custom, (3) reconverted Hindus, etc It should be noted here that certain Hindu castes in Malabar and Canara, follow the Marumakattayam or Alyasantanam Law as it is now amended by the Marumakattayam Act which Act greatly differs from the general Hindu law both in principles and practice. It should be further noted that the Special Marriage Act of 1872 as amended by Act 30 of 1923 governs also those Hindus, Jains and Sikhs who have contracted their marriage under the Act, the marriage being popularly known as "Civil Marriage". This Act also greatly differs from the general Hindu law and hence the legal position of Hindu women governed by these two Acts will be required to be dealt with separately in juxtaposition with that of the Hindu women under the general Hindu law.

Among the different communal laws that we are to deal with here the Hindu, the Mahomedan and the Burmese Buddhist laws are the only ones which still remain uncodified The Hindu law is based upon immemorial customs and ancient Smritis and Srutis. The Mahomedan law is also based upon precepts and holy doctrines of the Koran and the antiquated interpreters and law givers And it is unto this day, the communities governed by them clinging to them with slavish fidelity though they do not meet the requirements of the present age Also, these laws, being uncodified, present great difficulties particularly in matters of succession and inheritance , for different interpretations have been put by different learned commentators on the old texts of the earlier writers. This fact, in its turn, has generated differences in law obtaining in different parts of India with the result that different schools and sub schools in Hindu and Mahomedan laws have grown up Thus the Mitakshara and the Dayabhaga are the two main schools of Hindu law The latter prevails in Bengal, the former in other parts of India The Mitakshara is of supreme authority throughout India except in Bengal, where the Dayabhaga is of supreme authority The Mitakshara school is sub-divided into four minor schools, these in their turn differ between themselves in some matters of detail relating particularly to adoption and inheritance These schools are (1) the Benares (2) the Mithila (3) the Maharashtra or Bombay and (4) the Dravida or Madras school

We have already said above that the Mahomedan law is based upon the precepts and doctrines of ancient law givers. The first of these was Mahomed who used to get Divine Revelation in the form of verses in his Koran along with his precepts on points which remained unrevealed After the demise of the prophet in 632 A.D his successors and associates contributed to the development of the Islamic jurisprudence by way of glosses commentaries etc on the Koran which varied with individual capacities and preconceptions The result was that different sects and different schools of law have come in

existence among the Mahomedans. Also the Mahomedan law, like many other legal systems, recognises the legal force of customs, sometimes even when they differ from the rules laid down in the Koran. Thus, a student of the legal rights of Hindu and Mohamedan women has to wade through all these sources (general, customary and special law) for his purpose. The other communal laws, except the Burmese-Buddhist law, are the codified laws and therefore they do not involve complexities such as the Hindu and the Mahomedan laws involve

It should be further noticed that the Mahomedans are divided into two primary sects (1) The Sunnis and (2) The Shiahs. These two sects are again divided into a few other sub-sects Thus the Sunnis are divided into four sub-sects, viz. (1) the Hanafies, (2) the Shafeis, (3) the Malikis and (4) the Hanbalis This sub-division among the Sunnis arose mainly from the different interpretations put on the law by the different founders. The Shiahs, on the other hand, are divided mainly into three sub-sects viz. (1) The Asna Aasharis (which is further sub-divided into (1) the Usulis and (2) the Akhbaris), (2) the Zaidyas and (3) the Ismailias (e g. the Khojas and the Borahs of Bombay). There is, still, one more sect independent by itself, namely, the Motazala.

Of all the sects and sub-sects of the Mahomedan community as a whole, the Sunnis of the Hanafi school—the Hanafies—form a great majority of the Mahomedans of this country. The remaining minority comprises of the Shafeis of the Sunni-sect (they are found in Bombay where they are very few), the Ismailias of the Shiah sect (they are also mostly found in Bombay) and the Molesalam Girasias of Broach, the Sunni Borahs of Gujarat, the Khojas and Cutchi Memons in the Bombay Presidency, the Halai Memons of Porbandar in Kathiawar and Bombay, etc These Mahomedans are governed by the Sunni or the Shiah law, the two main branches of the Mahomedan law, according to the sect they belong to.

The Buddhists of India, who are almost entirely confined to Burma, are governed by the Burmese Buddhist law and in case where they have contracted their marriage under the Special Marriage Act, they are governed by the provisions of this latter act which is made applicable to them by the amendment Act XXX of 1923. The Burmese Buddhist law, as we have said above, is in an uncodified state like the Hindu and the Mahomedan laws. This law which is otherwise known as the Burmese Customary Law, is said to have its source in the Hindu law upon which has been superimposed customs peculiar to the Burmese people. This Buddhist law is found in the various Dhammadats† usually reckoned as 36 in number and considered more or less the authoritative source of the law amongst the Burmese. Of the thirty six the Mangya or Manu Kyay Dhammadat is and has been accepted by the British Courts as the most authoritative.

The Parsees and the Christians are governed by the Indian Succession Act as regards their law of succession and inheritance. But they possess different laws as regards their Marriage and Divorce. The Parsees are governed by their Parsee Marriage and Divorce Act, 1865 while the Christian Marriage Act of 1872 and the Divorce Act IV of 1869 are operative in the case of Christians. These laws are, more or less, based upon the principles of Western Christians. Also, they being codified ones present no such complexities as the Hindu and the Mahomedan laws do.

The tribal communities, which are the most uncivilized and uncultured communities in India have no established law of their own. The customs and usages prevailing among them form their law if it can be so called. These customs and usages vary at different places and with different communities. This being the case we propose to omit these communities from our thesis.

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†A Dhammadat [illegible]

Lastly, as the ordinary Hindu law is to be applied to Jains and Sikhs, in the absence of proof of their special customs and usages varying that law, the term "Hindu" should be understood by the reader to have included the Jain and the Sikh communities unless a contrary interpretation is made from the context

III

CONTRACTUAL RIGHTS OF WOMEN

WITH the preliminary remarks in the first two sections about the different communal laws which are essential in one's comparative study of the legal rights of women of the various communities, we shall now divide the legal rights that we are going to deal with in these pages. They can be divided mainly into three categories, viz. (1) the contractual rights, (2) the marital rights and the last but not the least (3) the proprietary rights.

Again to render the thesis more clear and comprehensible, one has to represent a woman into her three different and distinct states viz. (1) that of a spinster, (2) a married woman and (3) a widow, for her legal rights vary with the position or status she occupies at a particular period. And it is her legal rights in all these three states that shall have to be considered here.

To begin with the contractual rights of our women, one will be satisfied to know that difference of sex does not play its part at least in this branch of law as it does in cases of other branches particularly the laws of marriage and succession. The Indian Contract Act which extends to the whole of British India and which is also in force in almost all the Native States of India governs all the communities of this country without any distinction of caste or creed. It provides that 'Every person—a woman is included in the definition of person—is competent to contract who is of the age of majority according to the law to which the person is subject and who is of sound mind and is not disqualified from contracting by any law to which he or she, as the case may be, is subject.† Also her capacity to contract is not affected by her marriage either under the Hindu Mahomedan, Christian or Parsee law. The only qualifications that she is required to possess are that she must be of age (age of majority) of sound mind so as to understand the terms of the contract and must not be disqualified

† See Section 11 of the Act

by her personal law. The personal law of no community disallows its women to enter into contracts with regard to their separate absolute property. They can bind their property in any way they like or can dispose of it by act *inter vivos* or by will. The only women who are disqualified though with respect to a certain kind of separate and absolute property are the Hindu women during their coverture. This piece of property with respect to which married Hindu women have no absolute power to enter into a contract is a kind of their Stridhana, technically known as non-saudayika Stridhana, i.e., property acquired by mechanical arts, gifts from strangers, etc. The rule as regards this property is that the married Hindu women have no power to dispose of it during coverture without the consent of their husbands. It is only after the husband's death, that their power over it becomes absolute. Except this case of married Hindu women, marriage, whatever other effects it may have, does not take away or destroy any capacity possessed by any woman of any community with respect to her absolute property.

Thus, under all communal laws, a female at any stage of her life—maidenhood, coverture or widowhood—is competent to enter into any contract in respect to her separate absolute property except in the case above cited, provided she conforms to the provisions of S. 11 of the Indian Contract Act. It is not necessary to the validity of the contract that her husband should have consented to it. When she enters into a contract with the consent or authority—express or implied—of her husband, she acts as his agent and binds him by her act; and she may bind him by her contract in certain circumstances even without his authority, the law empowering her on the ground of necessity to pledge her husband's credit. Otherwise, a married woman cannot bind her husband without his authority, but she is then liable on the contract to the extent of her separate absolute property only.

The legal position of the Christian and Parsee women was quite different prior to the passing of the Indian

Succession Act X of 1865 and the Married Women's Property Act III of 1874 Before the passing of these Acts, these women if they were married, could not hold separate estate as was the case under the English common law *prior to 1882* The result was that property acquired by or vested in them could not be disposed of or bound by them Their husbands used to acquire interest in such property by reason of their marriage But now no husband acquires by virtue of marriage any interest in the property of his wife whether it was acquired by or vested in her, and therefore they have now acquired absolute power over their property *

Thus, the position of Parsee and Christian women married or unmarried, is in no way different now The creation of separate property in their case by the above two Acts impliedly confers upon them as an incident of such property the capacity to contract in respect thereof They can bind their property and can dispose of it in any way they like The unmarried women of these communities have long since, this absolute right even before the passing of the Acts

It need not be stated that a married Mahomedan woman is also by reason of her marriage not disqualified from entering into any contract The Mahomedan law ensures her full contractual capacity with regard to her own separate property as do the other communal laws to their women

Thus, the sum and substance of our present discussion of the contractual right of women of all denominations amount to this that the maidens married women except Hindu women in certain cases and widows are competent to contract and bind or dispose of their separate absolute property without any limitation whatsoever except the disqualification attaching to them by reason of minority or unsoundness of mind

IV

RESTITUTION OF CONJUGAL RIGHT

WE shall, now, turn our attention to the second category of the legal rights of our women, the marital rights. These rights are only confined to married women. Marriage, as such, gives them certain rights and subjects them to certain liabilities peculiar to itself In this chapter we propose to deal with the following important marital rights of the women of this country. They are —

(1) Right to require her husband to live with her, in other words, the conjugal rights,

(2) Right to ask for dissolution of marriage i.e. the right of divorce,

(3) Right to ask for judicial separation,

(4) Right to get the marriage declared null and void; and the last but not the least,

(5) The right of re-marriage

There are certain other rights e g right of maintenance, right of alimony etc. of the married woman which rights may come under the category of marital rights as they are the rights emanating in their favour by reason of marriage. But these will be dealt with by us in the third category of the legal rights i.e. when we shall attempt to deal with the Property rights of women, for these rights can safely come under this last category also because they relate to the right to property. And for the sake of convenience, we prefer to deal with them under the heading of the proprietary or property rights.

The first marital right arising from the very object of marriage, is the married woman's right to require her husband to liye with her and to enjoy her society This right is commonly known as the conjugal right and it is a right which is shared by women of all the communities of India except women governed by the Marumakattayam Act of 1929. S 11 of the said Act enjoins that "No

court shall entertain a suit for restitution of conjugal rights between parties marrying under this Act" It will really surprise a lay man when he sees that this Act, though it seems to be in great advance of the general Hindu law and seems to be very just and equitable to its women, puts such a restriction But when we see that marriage under this Act though it is regarded as a sacred and life long union is a contract pure and simple giving a right of free divorce and a right of remarriage on the death or dissolution of the marriage to both the sexes equally we cannot but say that the non recognition of this right is quite in conformity with the contract conception of free marriage This right still however, is absolutely required where marriage is a holy union and in no case it can be dissolved as is the case under Hindu Law of the upper castes or the Catholic Law of the Roman Church or where divorce is allowed but a refusal to live with the other party is not a condition or ground for a divorce In such cases, if this right is not given it will frustrate the very idea and object of marriage Where the right of free or unconditioned divorce at the will of either party prevails no party can be compelled if he or she does not wish to live with the other otherwise the marriage will be completely unhappy for nobody can be made to act or behave against one's will according to the dictates of others The same proposition is applied to all cases of marriage but so long as the law of marriage is not modified in other cases so as to give either party a right of free divorce or a right of divorce on the ground of one party's refusal to live with the other this right of restitution is necessary in the interests of the individual as well as the system of society based upon it notwithstanding the evils of no divorce or conditioned divorces.

Under the general Hindu law though very few cases of restitution of conjugal rights have been set up by women governed by it it is certain by looking at some decided cases that these women do possess this right

Thus, the Rt. Hon. Sir Dinshaw Mulla writes:—

"Either party to a marriage may sue the other for restitution of conjugal rights."* Mr. Mayne, the learned scholar of the Hindu law, also writes in his treatise on "Hindu Law and Usage" that "when the marriage is once completed, if either party refuses to live with the other, the case is no longer one for specific performance of a contract, but for restitution of conjugal rights. It has, long since, been settled that such a suit would lie between Hindus."† Thus a Hindu woman can bring a suit for restitution of conjugal rights if she is deprived of it by her husband. As regards how this right is enforced, it can be said that where the party against whom the decree has been made has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by the attachment of that party's property ‡ These decrees are enforced, now, under the Civil Procedure Code (Act V of 1908). This Act, futher, empowers the court executing the decree for restitution of conjugal rights to order the husband where the wife is the decree-holder, to make periodical payments as may be just, to his wife in certain circumstances.§ This law seems to have been modified, for, formerly, such decree was enforced either by imprisonment or attachment of property of the judgment-debtor or by both S 260 of the Civil Procedure Code (Act XIV of 1882) provided that where the party against whom the decree for restitution of conjugal rights has been made has had an opportunity of obeying it and has wilfully failed to do so, it may be enforced by imprisonment or by attachment of property or by both It can be said here that the provisions of the Civil Procedure Code of 1908 are made more moderate and lenient so far as the enforcement of this right is concerned, than the

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* Vide S 444 D. F Mulla's Hindu Law, 6th edition.

† Vide p 118-119, 7th edition

‡ Vide order 21, rule 32, Civil Procedure Code, Act V, 1908.

§ Vide O-21, R-33, Civil Procedure Code, Act V of 1908, as amended by Act 29 of 1923.

similar provisions under the Parsi Marriage and Divorce Act which we shall examine in its proper place

We have already seen that the women governed by the Marumakkattayam Act are devoid of this right and, therefore, the only case left for our treatment, as regards certain other Hindu women, is the case of Hindu women married under the Special Marriage Act of 1872 as amended by Act XXX of 1923 S 17 of this Act makes the "Indian Divorce Act" applicable to all marriages contracted under the former and hence the Hindu, the Sikh and the Jain women who have contracted their marriage according to the provisions of this Special Marriage Act, are also governed by the Indian Divorce Act which makes provisions *inter alia* for the recognition and enforcement of this right. S 32 of this Indian Divorce Act of 1869 entitles the women to sue their husbands, in case they withdraw themselves from their wives society without reasonable excuse. The said section runs as follows —

"When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights and the court on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted may decree restitution of conjugal rights accordingly

The Christian women and the Buddhist women married under the Christian Marriage Act and the Special Marriage Act respectively are governed by the same provision of the Indian Divorce Act

The Parsee women are governed by the Parsee Marriage and Divorce Act of 1865 in matters matrimonial and explicit provisions with regard to this right have been incorporated in the Act The said Act contains a provision under S 36 to the effect that a wife like her husband, can approach a court of law for a

jurisdiction in the matter, by means of a plaint claiming the relief for restitution of conjugal rights in certain cases mentioned in the section and once she gets a decree in her favour and the husband still persists in refusing to cohabit with her, she can get her decree enforced, under the same Act, by getting him punished either with simple imprisonment which may extend to one month or with fine or with both The section reads as follows —

"Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife... .... the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of conjugal rights and the court, if satisfied of the truth of the allegations contained in the plaint and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

If such decree shall not be obeyed by the party—in our case, the husband—against whom it is passed, he shall be liable to be punished with simple imprisonment which may extend to one month or with fine which may extend to two hundred rupees or with both"

The courts having jurisdiction in this matter are not the ordinary courts but they are specially constituted for the purpose of hearing suits under the Act Provisions are made in the Act for the establishment of such courts in each of the Presidency-towns of Calcutta, Madras and Bombay and in such other places in the territories of the several local Governments as such Governments respectively shall think fit Accordingly, we have the Parsee Chief Matrimonial Courts of Calcutta Bombay & Madras which have their local limits of jurisdiction coterminous with the local limits of the ordinary civil jurisdiction of the respective High Courts Provisions for the Parsee District Matrimonial Courts also have been made in the Act

The Mahomedan law, also, entitles its women to this right of claiming the society of their husbands, the

enforcement of which will be according to the provisions in the Civil Procedure Code of 1908 Though in the majority of cases in our country, the husband is the plaintiff in such suits, it need not be inferred that the wife cannot sue for restitution of her conjugal rights

The Burmese Buddhist law also recognises this right of its women and our High Courts have affirmed it on the ground that since divorce is not permissible at the will and pleasure of a party under this law, a suit for restitution of conjugal rights is competent in respect of parties to a marriage

V

THE RIGHT OF DIVORCE UNDER HINDU LAW.

"Although life-long monogamy is best when it is successful, the increasing complexity of our needs makes it increasingly often a failure for which divorce is the best preventive"

—*Bertrand Russell.*—

THE second and perhaps the most important legal right which can be possessed by a married woman is the right to get the marriage itself dissolved if she does not fare well with her husband under certain circumstances. The general tendency during modern times has been to simplify the law of divorce and to minimise the restrictions put up on it by different communal laws. But in India, we find to our great astonishment that very few women possess this most valuable legal right in its unqualified form. And a section of them even does not possess it at all. This last section comprises the unfortunate so-called upper caste Hindu women, other castes allowing the right on the strength of their custom. Even the Mahomedan law which is very liberal in granting this right to its male members, can be accused of partiality to the male sex, as, it concedes this right to its female members very sparingly with no restrictions imposed upon the male ones. The other communal laws, though they put restrictions upon the right of divorce are, still, very equitable and just, for, they apply these restrictions equally both to the males and the females governed by them

The right of divorce, with as few restrictions as possible, is essential for the healthy growth of society It is not only ridiculous but criminal also not to allow unhappy married couples to part with each other when they are not well mated and who feel that they are being tied to one another in an unhappy union This condition, really, makes life miserable in thousands of cases Why, on earth, the marriage bond should be so harsh and stringent when the parties to it want to separate? They are allowed to separate only in certain circumstances and in some cases, they are not allowed to do so at all.

These restrictions upon the right of divorce conduce much to the unhappiness of mankind It is beyond one's stretch of imagination why a marriage should not be dissolved or annulled when there prevails not love but hatred, where the parties are not well mated and where they feel being tied to one another like prisoners? The body can be bound but no law, on this planet earth, can fetter the mind No human law can crush the love that kindred spirits felt for one another Also, a happily mated marriage is one of the fundamental conditions of human happiness This being the case, continuance of marriage relation without love and liking between the parties is sure to end in dismal failure This is the reason why great thinkers and renowned sociologists of our time advocate a system of divorce free and untrammelled by conditions. The names of Bertrand Russel Mrs Bertrand Russel Bernard Shaw George Ryley Scot Judge Lindsey Upton Sinclair C F Calverton and others rank in the first row of the advocates of such a system They suggest that divorce should be made easy quick decent without notoriety and without mud slinging Instead of people being compelled to accuse each other publicly of wrong doing more often than not giving reasons that the law demands instead of the real reasons for their estrangement, they should be permitted to part quietly peaceably and with the utmost consideration for each others feelings

In this light of modern thought if we examine the position of Indian women one cannot help seeing that India lags much behind the current of these thoughts To take the case of Hindu women first one is apt to look upon the Hindu law with a mixture of wonder and pity He looks with wonder because this is the only law in this wide world which has no recognised the right of divorce either to the male or female members coming under its sway, it looks with pity because the non recognition of this right has caused great misery and has put the unfortunate Hindu women to untold hardship (This applies generally to the women of the so called higher Hindu families the lower and

forming the bulk of Hindu Society possess the right by custom) and has rendered their lives the most miserable That "divorce is not known to the Hindu law" is the rule, the exception is where it is allowed by custom The reason for its non-recognition is that a marriage from the Brahmin point of view, is a sacrament and creates an indissoluble tie between the husband and the wife Neither party, therefore, to a marriage, can divorce the other unless divorce is allowed by custom or his or her case comes within the four corners of the Native Converts' Marriage Dissolution Act, 1866. In no other case dissolution of Hindu marriage takes place The result is, that this sacrament conception of marriage, however noble and high it may seem to many, has worked immeasurable damage to the Hindu Society and particularly to its women against whom it has operated and still operates with a disastrous effect, for, so far as Hindu males are concerned, institution of polygamy has rendered divorce more or less unnecessary for them.

As to change of religion, it is now provided by the Native Converts' Marriage Dissolution Act, 1866, that where a Hindu becomes a convert to Christianity, and in consequence of such conversion, the husband or wife, as the case may be, of the convert deserts or repudiates the other party, the court may, on a petition presented by the convert, pass a decree dissolving the marriage and the parties may then marry again as if the prior marriage had been dissolved by death.* However, conversion does not operate *ipso facto* as a dissolution of marriage.

As regards custom, we have seen above that it is found prevailing generally among low caste Hindus and the Courts of India have repeatedly affirmed their right of divorce on the strength of custom. Mr. Mayne, who is considered a great scholar of the Hindu law, opines that it is prevalent among the tribal communities and also those castes and sub-castes of Hindu communities that did not come under Brahmanical influence. And

* Vide SS 5, 17 and 19, Native Converts' Marriage Dissolution Act XXI, 1866

the learned scholar is completely correct in this opinion of his when we find it entirely absent among the so-called high class Hindus

Though divorce is unknown to the general Hindu law as it is applied to day, it seems, it was not so in early Hindu law Several texts and commentaries of well known ancient writers, viz., Narada Vasistha, Baudhayana Katyayana and others bear this out When we look to the work of Narada* we find that the revered sage allowed in one or the other of the five following cases, a woman to take another husband These five cases are (1) her husband having perished (2) died naturally (3) gone abroad or deserted (4) if he be impotent and (5) he has lost his caste The sage Manu who is considered the highest authority, is strongly of the opposite view Still some texts of his appear to sanction a second marriage of a wife forsaken by her husband Mr Mayne thinks that this contradiction appears to arise from the deliberate *omission* of *part of* the orginal text in an earlier portion of the same chapter He basis his conviction (1) on the strength of the writings in the text of Manu that a wife whose husband resides abroad is directed to wait for him eight six or three years according to the reason for his original absence and (2) on the omission of what is to happen at the end of the time However, the early writings show conflicting views in the matter But it can be definitely said that this change of usage—discontinuance of the right of divorce—arose under the influence of Brahmanical opinion marriage coming to be looked upon as a sort of sacrament the effect of which was indelible This change of usage was adopted, particularly by the Brahmins and those castes desirous of obtaining a high relative position by close observance of Brahmanical customs

But when we examine the usages of the tribal communities and of the castes and subcastes of the Hindu community who did not come under the Brahmanical-

* [illegible]

influence, we find that a system of divorce prevails among them Mr. Mayne writes —"Among the Jat population of the Punjab, a wife who has been deserted or put away by her husband, may marry again and will have all the rights of a lawful wife The same rule exists among the Lingaits of South Canara. The learned author of the "Hindu law and usage" further writes "In Western India, the second marriage of a wife (called 'Pat' by the Mahrattas and 'Natra' in Gujarat) is allowed among all the lower castes . ... In Burma, divorce is available to both sexes alike, and is apparently more often initiated by the wife than by the husband*

The Government of Baroda has decidedly taken a bold and progressive step in allowing to all its Hindu women recently, the right of divorce though in certain circumstances only, thus going a step forward in the direction of social reform in spite of opposition from all the quarters of the State It has passed an Act which is known as the "Divorce Act" Prior to the passing of this Act, the Hindu women along with the Hindu males, of the State, were governed by the provisions of divorce according to the General Hindu Law Now, that the Act has been passed, these women who were, upto recent times, sharing in the disability with their Hindu sisters in the territories of British India and other Native States, have gained one more right to their credit, the right which they badly required and which was denied to them from centuries back The following are the grounds under which a Hindu woman of the Baroda State can get a divorce and free herself to marry again —

(1) Desertion by a husband who is not heard of for seven years, or

(2 Renunciation of world by a husband ; or

(3) Change of religion on the part of husband; or

(4) Cruelty on his part; or

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* Vide Ch IV para 94 of "Treatise on Hindu Law and Usage," by the author, 7th edition

(5) Desertion by the husband for three years after cohabitation, or

(6) Adulterous conduct of the husband, or

(7) Failure in performing his duties due to bad and vicious habits for three years

This qualified law, it seems, is based more or less upon the principles of English rules of divorce. But, this much we can say that the Baroda Government, by incorporating the Law of Divorce in its Hindu law, has realised in its true aspects, the changing needs of the time and has thus shown its far sightedness and progressive views, at least, in the field of social reform. One may not be fully satisfied with this qualified Act of the Baroda Legislature, still, there can be no two opinions that the Baroda Government is worthy of congratulations for its deep enthusiasm and desire to see its subjects, particularly its women, on the path of social progress and for its taking the initiative in the matter as an example to other Native States, and much more to the Government of British India.

Apart from this, it is to be further congratulated for its inserting one more nail to the rigid coffin of the sacrament conception of Hindu marriage as a sacred life long union never to be dissolved by either party to it. This Divorce Act strikes at the root of the sacredness of the institution and thus gives its quota to the general movement on foot which aims at the demolition of the tottering edifice of the present day marriage institution of the Hindu Society and building on its ruins a new and living system of its own based on just and equitable principles of modern times. The fact that so large a number of marriages turn out dismal failures in Hindu Society is in itself a condemnation of the sacrament conception of marriage the very fact that even a strikingly unhappy marriage is not allowed to be annulled or dissolved under any circumstances and a poor Hindu woman is forced to submit to her husband's whims, caprices and what not, and to endure calmly and silently, like a dumb animal any sort

of vicious and sometimes, even, beastly habits and practices of his, is sufficient in itself to demand an immediate basic change in the Hindu marriage concept and its prevailing system. New times create new circumstances which in their turn, create new needs and requirements With the passing of time, those ideals which never became general began to disappear and the principles came to be in disuse. This was all due more or less to the changing conditions of time, the conditions requiring the acceptance of new ideas of life and conduct, as well as to the influence of foreign contact and culture.

This state of things has set many a mind to think about the problem "how to mend or end this present system of marriage," the problem which is assuming greater importance everyday. We wish this humble endeavour of ours of stating the facts as they exist at present and the juxtapositional setting out of the legal position of Hindu women on one side and those of the women of other communities on the other in these pages, render at least some service to the right cause of our age-long oppressed Hindu sisters, when recently an attempt has been made in the Indian Legislative Assembly by Sir Hari Singh Gour to engraft some provisions relating to divorce in the General Hindu Law.†

† According to many, this Bill relating to divorce, is a very mild measure If does not satisfy the general demand made by Hindu women of the country, nor does it satisfy most of the educated and cultured section of the Hindu community The bill provides impotency, incurable diseases such as leprosy etc, and lunacy to be the only grounds of divorce. These very limited provisions are quite inadequate to solve the burning problem of today. If the dire consequences of unhappy marriages are, really, to be ended, then the Bill should incorporate at least those provisions that are provided in the Special Marriage Act. However, unsatisfactory and inadequate the present Bill is, we welcome it only with the hope that it may prove a stepping-stone, in future, to a system of free divorce, or to a system with as few restrictions as possible

VI

DIVORCE UNDER MAHOMEDAN LAW

UNLIKE the Hindu Law, the Mahomedan Law does recognise the principle of divorce This principle upon which the whole Mahomedan law of divorce is based has been well summed up in the 2nd chapter of the Koran— Either retain them (the wives) with humanity or dismiss them with kindness But this particular precept of the Prophet seems to favour the husbands more than their wives for the above precept in the Koran it seems has been written with reference to the behaviour of husbands towards their wives And the study of this branch of the Mahomedan law bears this out A student will at once find on reading the law on the subject that the Mahomedan law accords a husband very wide power for dissolving the marriage-tie than it does to a wife A husband can exercise his right of divorce at his mere will and caprice and even without assigning any reason by uttering parrot like the words Talak (Divorce) successively for three times but a wife cannot do so and cannot divorce herself from her husband without his consent She is entitled however under certain circumstances, to obtain a judicial decree even without his consent

It seems from the above that a Mahomedan wife has two modes of dissolving her marriage tie viz (1) by obtaining a judicial decree and (2) with the consent of her husband. She can avail of the former mode only when her husband is impotent or when he charges her with adultery or denies the paternity of her child It is only on one or the other of the two grounds that the Mahomedan Law entitles her to sue her husband for divorce No other ground justifies a wife's suit for divorce though Mr Amir Ali is of opinion that cruelty and conjugal infidelity on the part of a husband or his inability to maintain his wife or other like circumstances may be good grounds for a wife's claim a judicial decree

for divorce. This learned scholar and a renowned author on Mahomedan Law quotes the practice of the Algerian Courts as an authority for his opinion But the soundness of his opinion is gravely doubtful. It may be said here that the Indian Courts do not recognise the above grounds for a wife to claim a judicial decree for divorce

As regards the other mode i e the mode of obtaining divorce with the consent of the husband, a wife can effectuate a dissolution of her marriage by mutual understanding and agreement with her husband This form of divorce may be either a "Khula" or a "Mubarat". The only distinction between "Khula" and Mubarat" is that when a divorce is at the *instance* of a wife (of course, the husband has the option of agreeing or refusing to assent to 'Khula') it is called Khula, while when it takes place by mutual consent, it is called Mubarat. So Khula and Mubarat are both divorces by mutual consent or agreement. A further distinction between the two is drawn by the Shiahs though the Sunnis often place the two on the same footing According to the Shiahs, in the case of a Khula, the wife gets her release from the matrimonial tie in exchange for some valuable consideration (such as remission of dower, or gift of some property to the husband), while in the case of a Mubarat, there is no question of any such consideration. When the husband and the wife realise that they cannot pull on well with each other, either on account of incompatibility of temper or by reason of some difference of opinion between them or for some other reasons, they can give each other a mutual discharge from the matrimonial obligations by means of a Mubarat * Thus, according to the Shiahs a "Khula" is virtually a purchase of divorce by the wife, while a Mubarat is not so. The Shiahs make this distinction between the Khula and Mubarat on the authority of the "Hedaya" wherein the Khula has been de-

* See page 179, the "Principles of Anglo-Mahomedan Law," by A C Ghose, 4th edition

fined as "an agreement entered into for the purpose of dissolving a connubial connexion in lieu of a compensation paid by the wife to her husband out of her property'

Thus a Mahomedan married woman cannot claim the right of divorce without her husband's consent as a matter of right, excepting under special circumstances (Laan or imprecation and impotency on the part of the husband) which entitle her to obtain a judicial decree This shows to what an extent the Mahomedan law is inquitable and one sided to its married women However they are not so unfortunate as their Hindu sisters who do not posses this right

VII

RIGHT OF DIVORCE UNDER OTHER LAWS

WE, now, turn to the other sections of the Hindu women who are not governed by the Hindu law. These women are the women governed by the Marumakattayam Act and women governed by the Special Marriage Act We take the case of women governed by the Marumakkattayam Act first and see what position they enjoy under their communal law.

When we look to the provisions of this Act, we find to our great delight that the women governed by it are the most fortunate of all the other women of this country The Act gives them an unrestricted and unqualified right of free divorce. There is no other communal law in this country which gives such free right of divorce to its women So far as our knowledge goes even the countries of Europe, America and other countries except Spain and U S. S R. (United States of Soviet Republic—Soviet Russia—) have, still, not given a right of free divorce to their women. The laws in these countries allow divorce in certain circumstances only, though many of them are, now, contemplating to minimise the restrictions in response to their respective social necessities and social opinion

The Marumakkattayam Act, as we know, is a special legislation codifying the customary law of Malabar and was passed very recently in the Madras Provincial Legislative Council The credit goes to Sjt K. Madhavan Nair who gave the lead in the matter and brought the Marumakkattayam Bill which is, now, passed into the above-said Act The Act seems to be very just and equitable, for, it gives to its women rights which are, not only, in no way inferior to those given to women by other communal laws, but, sometimes, they are superior to the latter as it is found in the case of divorce This being the case, the Marumakkattayam Act raises the legal position and with it recognises the social status of its women already enjoying freedom in this direction as an equal partner of men.

The Act provides that "a marriage will be dissolved by a formal order of dissolution as hereinafter provided." The provisions of how to obtain such order by a married woman are to the effect that she has to present a petition for the dissolution of her marriage in the Court of the District Munsif within the local limits of whose Jurisdiction the marriage was contracted or the husband—the respondent in the case—has permanent dwelling or actually and voluntarily resides or carries on business or personally works for gain at the time the petition is presented A notice to the effect is served upon the husband and if within six months after the service of such notice the wife does not withdraw her petition, the court shall declare in writing the marriage dissolved Similar are the provisions in case a husband is the petitioner, but with this qualification that if he moves the court for an order of dissolution of his marriage, he, in all cases, has to offer in his petition reasonable compensation to be given to his wife, the amount of which is to be determined by the court dissolving the marriage

This principle of compensation in the Marumakkattayam Act is adopted it seems, after the principl of alimony of the English and other like laws Women being economically dependant a just law ought to provide the divorced wives a right to certain amount from their husbands in the nature of alimony, otherwise one cannot imagine what would be their conditions so long as they are not married and if they have no other means of livelihood It is tolerible in case where the divorce is effected at their instances. From this a reader is sure to come to a conclusion that the Marumakkattayam Act is the most just at least in its branch of divorce to its women of the other communal laws

effected on reasonable grounds such as adultery, disobedience on the part of a wife or cruelty on the part of a husband. The right of divorce under the Marumakkattayam law, also, was such that either party to the marriage union could dissolve it at pleasure, the other party having no remedy though, in practice, it was and is becoming restricted gradually, only among the higher classes, to fairly justifying causes. Though the law is there which allows marriage to be dissolved at either party's instance and at the mere will and pleasure of either party, the cases of divorce are very uncommon among the higher classes. It seems the facility given by the law to get a divorce so easily, is not abused, though cases of divorce do occur but they occur mostly when there are reasonable grounds.

The other section of the Hindu community which has volunteered to be governed by the Special Marriage Act as amended in 1923 on account of its progressive and beneficial provisions, constitutes a very small part of those Hindu men and women (Jains and Sikhs including) who are well reputed for their most advanced and cultured views and for whom the amendment of 1923 made it possible to so marry in the civil form without foregoing their religion. For one reason or another the other part has not availed itself of or could not avail of the Special Marriage Act which is, now, popularly known as the Civil Marriage Act and the marriage under it as "civil marriage" Still, it does support the marriages under the Act and oftentimes exercises its energy in making the various benefits of civil marriages widely known among the public by means of press and platform propaganda It is this most advanced and enlightened section of the Hindu community that moved the Indian Legislature to amend the Special Marriage Act of 1872 by its Act XXX of 1923 and made the Act available for Hindus, Jains, Sikhs and Buddhists who contract marriages according to the provisions of the Act. This section of educated Hindus was disgusted with the unjust, inequitable and retrogressive rules and writings of the Hindu Law. It abhored *inter alia* the degenerate

doctrines and concepts of the so called Hindu sacred marriage. It desired a short but sane and simple system Its contention was that the Civil Law administered by the Courts of Justice should no longer prevent those Hindus who may be so minded, from adopting a different practice as regards succession and marriage in accordance with their progressive ideas and sentiments In response to this demand, the Indian Legislature thought it just and advisable to allow marriages between persons each of whom professes one or the other of the Hindu Buddhist Sikh and Jain religions* and to allow them to adopt the rules of succession and inheritance provided in the Indian Succession Act, 1865†, and the Indian Divorce Act in matters of Divorce

This Special Marriage Act which now governs the Hindus among persons of other communities following

neral Hindu law and satisfies to a great extent the progressive ideals and sentiments of the advanced section of the Hindu community along with other communities governed by it.

We have seen above that this Act recognises marriage under it as a contract But though this contract conception of marriage does not permit the marriage bond to be dissolved at any time at will, still it is a thousand times better than the Hindu and Mahomedan laws so far as the women under these two laws are concerned. That this is so, is obvious from the facts that unlike Hindu Law, it does not recognise the indissolubility of marriage-tie as we have already seen above and that it is not in the least inequitable and one-sided against its women as is the case with the Mahomedan law. We shall examine now under what conditions and circumstances the Hindu women governed by this Special Marriage Act can effect their divorce and can put an end to their unhappy marriage relation

The Special Marriage Act enjoins a marriage under it to be dissolved under one or the other grounds specified in the Indian Divorce Act IV of 1869. S. 17 of the former Act provides that "the Indian Divorce Act shall apply to all marriages contracted under this Act and any such marriage may be declared null or dissolved in the manner therein provided and for the causes therein mentioned.... .." This being the case, we shall have to turn to the pages of the said Divorce Act for our purpose. When we do so, we find that Sec. 10 of the Act provides Hindu women along with other women a way how and the grounds under which they can smash their marriage contracts and sever their unhappy, undesirable and loath-some union with their husbands. They can do so by pesenting a petition to the District Court or to the High Court, mentioning one or more of the grounds given below —

(1) Change of religion by a husband and his subsequent marriage with another woman,

(2) commission of incestuous adultery by him;

(3) or of bigamy with adultery by him,

(4) or the husband has been guilty of marriage with another woman with adultery,

(5) or of rape, sodomy or bestiality,

(6) or of adultery coupled with such cruelty as endangers life, limb or health, bodily or mental,

(7) or of adultery coupled with desertion without reasonable excuse for two years and upwards

Thus a Hindu woman who has married under the Special Marriage Act and has got her marriage registered in the Civil Court for the purpose, can get her marriage dissolved even during the life time of her husband provided her case falls within the four corners of the circumstances and conditions under which a dissolution is permitted by the Divorce Act She can make herself a free woman, free to remarry rather than drag out an irksome life, bound to the chariot wheels of marriage like her sister married under the Hindu law who cannot sever her marriage bondage even though she is treated by her life mate ( ) like a beast or even though she is disgusted with his vicious conduct

It will be a decade since the Hindus are afforded an option either to avail of the precious benefits of the civil marriages contracted under the Special Marriage Act or to drag out their lives under the disabilities of so-called sacred marriages under the Hindu Law But to one's surprise very few Hindus have availed themselves of this progressive and beneficial Act because of the tyranny of caste ostracism The primary reason for this unhappy fact is that the benefits of civil marriages are not well propagated either in the press or on the platforms by our social reformers But it is a happy sign of the day that the situation is improving though

respect to their right of divorce is the "Parsee Marriage and Divorce Act" of 1865, while their Christian sisters are governed by the "Divorce Act" of 1869, the same Act that is applied to persons married under the Special Marriage Act We have already dealt above with the right of divorce of Hindu women, including Jains Buddhist & Sikhs, married under the Special Marriage Act and who are governed by the same Divorce Act.

A Parsee woman can say with pride that her legal position, so far as this right of divorce is concerned, is not in the least less enviable than that of her Christian sister or Hindu sister married under the Special Marriage Act. She has been accorded this right under S. 30 (2) of the Parsee Marriage and Divorce Act. The section runs as follows —

"And any wife may sue, that her marriage may be dissolved and a divorce granted, on the ground that, since the celebration thereof, her husband has been guilty of

(1) adultery with a married woman, or
(2) fornication with an unmarried woman, not being a prostitute, or
(3) bigamy coupled with adultery or
(4) adultery coupled with cruelty, or
(5) adultery coupled with wilful desertion for two years or upwards, or
(6) rape, or (7) unnatural offence."

So a Parsee married woman can effect the dissolution of her marriage on any one or more grounds stated above by taking recourse to a court of law None of the above grounds *ipso facto* operates as a divorce.

The Buddhist women are empowered to dissolve their marriage relation by means of a divorce under their personal law, the Burmese-Buddhist law. But those of their sisters who have availed of the Special Marriage Act are empowered to do the same under the

Divorce Act, the provisions (relating to divorce) of which we have dealt with above.

The Burmese Buddhist Law though it confers upon the parties to a marriage a right of divorce does not seem to permit a free right of it inspite of its extremely lax notions of sexual relationship We draw our reader's attention to a recent case wherein the Rangoon High Court has held that "A divorce is not permissible at the will and pleasure of one party to a Burmese Buddhist marriage without proof of a matrimonial offence Still, the following are held to be valid and sufficient grounds for a Maya (wife) to effect a divorce They are —

(1) Desertion coupled with failure to maintain by the husband,

(2) Mutual consent

(3) Single act of misconduct with mutual consent In this case the principle is based on allowing a wife to free herself from a bond which becomes intolerable

(4) Chastisement by the husband

(5) Adultery coupled with cruelty, a single act of assault is sufficient in this case

Also a seniormost wife has a further right to claim divorce on the ground of a second marriage by her husband without her consent But she cannot claim this right on this ground if she is barren or has borne female children or is suffering from a disease

VIII

RIGHT TO JUDICIAL SEPARATION

THE third among the marital rights is the right to obtain a judicial separation. It is a right which, though it does not dissolve the marriage-tie, still entitles a married woman, of course under certain circumstances, to separate from the dominion of her husband and to ask for her separate maintenance, without in any way affecting her rights in her husband's property Many a time, it so happens that a course of divorce is not taken for fear of social disapprobation or such other like reasons, and in that case, this right of asking for a judicial separation is really a boon to many married women, especially women of the richer classes. It also happens that a recourse to divorce is not taken by a woman who, for financial reasons, prefers to seek a separation Instances are not wanting in this direction To quote Mr George Ryley Scott, F P H S (Eng), F. Z S, and a fellow of the Royal Anthropological Institute, London, "thousands of wives refuse to divorce their husbands for financial reasons, others find it more profitable to obtain a judicial separation Thus, this right affords an alternative to a married woman to choose and decide for herself what course would make her happier and more independent. In this lies the true intrinsic value of this right"

The Hindu and the Mahomedan laws do not expressly provide their women with this precious right, such that they may go to a court of law and obtain a decree for judicial saparation. But, it seems, they possess a similar but an indirect right in the sense that both the Hindu and the Mahomedan laws justify their leaving the premises of their husbands and still give them the right of separate maintenance provided their case falls within the four corners of their respective personal laws.

Thus a Hindu woman, though her first duty to her husband is to submit herself obediently to his authority

and to remain under his roof and protection, would be justified in leaving his house and would be entitled to separate maintenance from him if he kept a concubine in the house or habitually treated her with such cruelty as to endanger her personal safety In such cases, even a suit brought by her husband for restitution of conjugal right would fail. Change of religion on the part of the husband is also a sufficient ground to entitle her to a separate residence and maintenance so long as she does not subsequently remarry

Similarly a Mahomedan married woman of either sect can withdraw herself from the society of her husband and live separately from him and still remain entitled to maintenance from him provided she has been treated with such cruelty on the part of the husband as to endanger her life or she leaves him on other lawful or justifying cause These grounds are valid defences to a suit by the husband *for restitution of conjugal* rights.

The only women who are expressly forbidden this right are the women governed by the Marumakkattayam Act, and the Burmese Buddhist Law The former Act provides that no court shall entertain a suit for restitution of conjugal rights or for judicial separation between parties marrying under this Act † As regards the latter there is no such thing as a judicial separation under the law but an order for restricted hire maintenance under S 488 of Cri Pro-Code is practically a judicial separation

a decree for separation They can do so only under the conditions and circumstances mentioned in S. 22 of the Divorce Act. This section provides that a wife may obtain a decree for judicial separation on the ground of adultery or cruelty or desertion without reasonable excuse for two years or upwards on the part of the husband And it has been further provided by S 37 that the High Court or the District Court, as the case may be, may, in its discretion, order the husband to pay to his wife a periodical or gross sum of money by way of permanent alimony at the time of making the decree absolute.

The Parsee Marriage and Divorce Act also expressly provides the women governed by it, i e., Parsee women, with a right to ask for a decree of judicial separation Sec. 31 of the Act gives the grounds under which the decree can be obtained It provides that "If a husband treats his wife with such cruelty or personal violence as to render it in the judgment of the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into, or allowed to remain, in the place of a wife by her own husband, she shall be entitled to demand a judicial separation" And Sec. 34 of the Act makes a provision for a permanent alimony to her like Sec. 37 of the Divorce Act.

It can be said here that the legal position of women who are expressly provided with this right is far superior to that of women who enjoy this right indirectly The reasons are obvious and need no explanation But we cannot refrain from saying that the right being restricted to cruelty and adultery alone, it oftentimes happens that the parties to a marriage are compelled to accuse each other falsely so as to satisfy the requirements of law, instead of giving real reasons for their estrangement This fact, really, lowers the parties in the estimation of the society The remark equally applies to the case of divorce also. Oftentimes, people, wishing to dissolve their marriage, take

recourse to mud slinging and notorious tactics This state of things would be set right only when the law on the subject is made to impose as few restrictions as possible and it is, therefore, essential in the interests of both the individuals as well as society that it should be made so

But here comes the objection that if divorce is made so easy or if either party to a marriage may separate at will, there will be a general breaking up of marital ties and the whole society will be upset. One is tempted to answer this common objection which is often put forward by the opposite camp before he closes his discussion on the subject. If marriage is really an institution for the healthy growth of society, it should be trimmed of all its shamness and hypocritical observances No law can hold a couple together who wants to part from each other If the man made laws do not allow the unhappy married couples to separate or divorce at all, marriage is a sham in those cases and the couples only play hypocritical roles of husbands and wives Instead of mutual love, hatred reigns in those cases This state of things has, often, resulted in murders suicides, illicit intercourse and many other evils All communities will lend ample evidence to our statement On the other hand, where the marriage tie is dissolved or annulled only under certain conditions and circumstances provided by the law, the unhappy married couples, often, create the condition and circumstance that the law demands, if the condition or circumstance does not exist Anyway, the restrictions frustrate the very object of them Not only that, but they work to the degeneration, instead of the healthy progress of the society by forcing its members to play a sham and bypocritical role, making their lives miserable and, oftentimes, not worth living

The advocates of free divorce or those who advocate for more liberal divorce laws contend that there need not be such shamness and hypocrisy in the society Shamness and bypocrisy do not make an unhappy marriage-union happy And further, those who want to

sever the marital ties, they do so even if the law does not permit, by all means desirable or otherwise. They say that it is not the law that holds a married couple together happily but love, comradeship, common interest, habit, common memories and all those tender bonds of intimacy that make a married life really happy and honest, it is not an easy divorce that will cause a general breaking up of marital ties or that it will smash the structure of society but just the contrary will happen. They point their fingers to Soviet Russia which is the only State on this earth which recognises the system of free divorce and shows that the percentage of divorce in this State is very low as compared with those of the other countries which restrict the right of divorce to specific conditions (Recently, Spain has followed suit like Soviet Russia) They, further, contend that the institution of free or easy system of divorce would make the husbands or wives think twice before they behave improperly or harshly towards each other and tend to preserve love, tenderness and consideration for each other ever fresh in their mind

We leave to the readers to think for themselves how far the contentions of both the schools of thought are correct and convincing after examining the statistics of relative countries and the other socio-economic consequences of the varying laws

IX

NULLIFICATION OF MARRIAGE

THE fourth marital right for our discussion is the right to get the marriage declared null and void, and invalid. Women governed by different communal laws can put this right of theirs into effect when their marriages are contracted with persons who are labouring under an inherent incapacity or absolute disability recognised by their respective laws for the purpose of matrimonial alliances, or when these marriages are brought about by force or fraud

But of all the laws the Hindu law is the most strange It does not regard mental or even physical incapacity as a ground of nullifying a marriage. The reason is that marriage, according to Hindu law, is a holy union for the performance of religious duties, and not a contract, therefore, the law does not require a consenting mind or physical capacity The result is that a marriage with an eunuch is not an absolute nullity with the Hindu law Mental incapacity also stands in the same position *

But the tendency of our High Courts seem to disfavour the above view The Calcutta High Court has decided that the marriage of a lunatic is not valid in the case of Moujilal vs Chandrabati (1911) 38 Cal 700. Also the Madras High Court has decided that a marriage brought about by force or fraud is altogether invalid

Apart from this, the Hindu law, like the other communal laws regard marriage as invalid if it is contracted between persons related to each other within the prohibited degrees, unless such marriage is sanctioned by custom The only difference between the Hindu law on one side and the other legal systems on the other, is that when the former regards such marriage as invalid, the latter consider it not only invalid but also void *ab initio* i e from the beginning

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* Vide p 108 Mayne's Hindu law and usage 7th edition

The other legal systems, which consider marriage a contract, expressly provide that lunacy, idiocy and impotency at the time of marriage are grounds for declaring a marriage null and void except the Mahomedan law which, it seems, allows lunatics to be contracted into marriage by their guardians. But as regards consanguinous marriages, all the laws are uniform in declaring them void.

Thus Hindu women can go to a Court of law and pray for declaring their marriages invalid provided their marriages are contracted with lunatics or with persons within the prohibited degrees unless such marriages are allowed by custom or their marriages are brought about by force or fraud

Similarly, the Hindu women governed by the Marumakattayam Act can get their marriage declared void on the ground of their husbands' having married during the continuance of their prior marriages or on the ground of consanguinity. The Act does not provide for any other incapacity or disability that may render a marriage void.

But the case of those women who are governed by the Special Marriage Act is quite clear. The Divorce Act which is applied to these women expressly provides the grounds which renders certain marriages null and void. These grounds are mentioned in S. 19 of the Act and these are as follows

(1) Impotency of the husband at the time of the marriage and at the time of the institution of the suit;

(2) If the parties to the marriage are within the prohibited degrees* of consanguinity (natural or lega) or affinity

(3) Lunacy or idiocy of the husband at the time of the marriage,

(4) That the husband has married during the continuance of a prior marriage, and

* Prohibited degrees, should be meant degrees that are prohibited by the customary law of the class to which the parties belong.

(5) That the consent of the wife was obtained by force or fraud

The above are the grounds under which woman governed by the Special Marriage Act as amended by Act XXX of 1923 can get their marriages declared null and void These women include the Hindu Jain, Sikh and Buddhist along with women of other communities viz. Jew and other non Mahomedan and non Christian communities married under the Act It seems from the above that these grounds are the logical consequence of the contract conception of marriage under the Act and of the great and primary object of marriage which is the procreation and upbringing of children The first and fundamental condition of a contract is that it should be entered into by competent parties and by none else and therefore the case of a marriage contract necessarily requires the parties to it to be of sound mind and of procreative ability

The women of the Parsee community are accorded this right under S 27 and 28 of the Parsee Marriage and Divorce Act. These sections lay down that a Parsee wife can get her marriage declared null and void provided her husband was a lunatic or of habitually unsound mind at the time of her marriage and that she did not know of it at the time of marriage and that his lunacy or habitual unsoundness of mind still continues. Further, she can do so on the ground of her husband s impotency which renders consummation of marriage impossible Also, though a marriage between parties of prohibited degrees does not seem to come under the scope of these two sections, it need not be taken to be a valid marriage For such a marriage is also invalid and it is made so by S 3 of the Act

Marriage, under the Mahomedan law being purely a civil contract between a man and a woman for the purpose of legalising sexual intercourse and children, the women under the law, though not expressly provided, do possess this right and can get their marriage declared null and void on the ground of their husbands impotency,

etc. But it should not be forgotten that the Mahomedan law seems to allow lunatics to be contracted into marriage by their guardians. This is quite in contravention of the primary condition of a contract, viz , the condition of sound mind of the parties. Also consanguinity, affinity and fosterage are the grounds under the Mahomedan law to render a marriage void.

It should be noted here that there is a great difference between a marriage that is void and a marriage that is merely invalid A void marriage is altogether illegal and does not create any civil rights and obligations between the marrying parties, while a merely invalid marriage is not altogether illegal and hence it is not necessarily accompanied by a non-accrual of civil rights and obligations.*

* Vide p 143, "The Principles of Anglo-Mahomedan Law" by A C Ghose, 4th edition

X

RIGHT OF REMARRIAGE.

WE, now, come to the fifth and the last but not the least, marital right of our women, the right of remarriage This right of remarriage arises on the dissolution of the first marriage which may be either by way of divorce or death of the other party or by getting the marriage declared null and void On the dissolution of the marriage, the marriage tie is completely severed and it leaves it open for the parties to contract fresh marriages whenever they like as if the prior marriage has been dissolved by death except in the case of Mahomedan women who are required to observe the period of 'iddat, * before they can remarry

It is gratifying to note that women of one and all the communities possess this one of the most valuable right either in their state of a divorcee (divorced wives) or of widowhood except certain Hindu married women who have no right of divorce though they do possess the right on their attaining widowhood These unfortunate women as we know, belong to the high castes of the Hindu community and they are very small in number as compared with the other section of the Hindu women who form a large majority of the Hindu population and who are allowed the right of divorce by custom. Formerly, even the high caste Hindu did not possess the right of remarriage on their attaining, even, widowhood, but this legal incapacity has now been removed by the passing of the Hindu Widows Remarriage Act in 1856

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* Iddat is the technical name given to the period of probation which according to the provisions of the Mahomedan law is incumbent upon a widow or a divorced wife to observe in order to ascertain whether she is enciente or not. The iddat prescribed for a widow is four months and ten days, while that for a divorcee is three months or three courses, if she is subject to menstruation If she is pregnant her iddat will last till delivery Also note well that, ascertainment of pregnancy being the sole object, iddat need not be observed where the marriage has not been consummated.

Prior to the passing of this badly needed and much-desired Act, remarriage of Hindu widows was not known to the general Hindu law. The reason was that a marriage, from the Hindu point of view, creates an indissoluble tie between the husband and the wife and that even death could not dissolve this marriage tie. Still, it allowed and continues to allow its male members to remarry even as many times as they like. The result was that widows could not remarry unless remarriage was allowed by the custom of the castes to which they belonged This legal incapacity had harboured many evils of their kind in the high caste Hindu society and necessity was felt to remove them in the interests both of the individuals and the society. The Indian Legislature, in response to the demand of many Hindus of saner and broader views who found widow remarriage a social necessity, thought it expedient to legalize the marriages of Hindu widows and passed an Act in 1856 to that effect with a hope that "the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare."*

Now that this incapacity is removed by the Legislature, one and all Hindu widows are free to remarry if they so desire and their second marriage will be held valid and their issues from such marriage, legitimate Thus in the eye of law, Hindu widows are given an equal status with the widows of all other communities so far as this right is concerned.

But while we highly appreciate the work of our Legislature, in this respect, we cannot but deplore the fact that even though not less than three-fourth of a century has run after the passing of this enactment, very few widows (of course, widows from the high caste Hindus) have been showing the courage to rise above the age-long so-called holy custom by availing themselves of the freedom conferred upon them by the enactment. Though recent years have shown a great increase in

* See the preamble to the Act.

their number i. e in the number of widows who have remarried, and the modern trend of mind being in favour of such remarriages, the number will still go on increasing though slowly, still the Hindu society is seething with widows The recent census exhibits 50 lakhs of these wretched women Such an enormous number, in spite of the law allowing remarriage, is chiefly due to the social prejudice against remarriage of widows The higher castes of Hindus forbid it altogether and the custom is held to he a mark of social respectability This wrong and faulty notions of respectability has done tremendous mischief to society Most of the widows who in their heart of hearts, desire to put an end to their wretched state by remarriage are prevented from so doing at the mere apprehension of being the victims of society s wrath and disapprobation They are afraid of this wrath and disapprobation more than anything else It is now high time that these prejudices and wrong notions of respectability should be made matters of the past.

But one word more to the opponents of widow remarriage before we discuss the right of other women To those who consider "this forced widowhood as a mark of respectability we, with due deference to them ask 'Is it fair and just to ask the unhappy and destitute widows to observe widowhood in the name of society when the males are allowed to marry and remarry as many times as they like? And can the high status of the society be ever attained by such one sidedness and at the cost of justice and fairness? What have they to say further when we draw their attention to the manyfold evils of forced widowhood, viz. suicides, abandonment of illegitimate children by widows, etc which are the things of everyday occurrence in the Hindu society? Do these frequent occurrences really raise the status of their society? We leave these points for the readers to judge for themselves. Those who support it on the ground of religion and established customs forget that customs should be changed with the changing social order in accordance with the new needs and requirements of

society It is needless to say that society has always moulded and will always mould its customs so as to be most agreeable to itself. As regards the religious injunction against it, it is well to be noted that this incapacity, although it is in accordance with established custom, is not in accordance with the true interpretation of the precepts of Hindu religion Passages of the Vedas quoted by Dr Mayr and other learned scholars of the early Hindu Law, sanction the re-marriage of widows Even the early writers, whom we still hold in high respect, did sanction the second marriage of women after the deaths of their husbands Narada, Vasishtha, Devala, Baudhayana, Katyayana, to quote a few among them, placed no restriction on the second marriage of widows. Though the authority of Manu is strongly on the other side, Mr Henry D Mayne, the author of the "Hindu Law and Usage" is of opinion that this is one of the many instances in which the existing text of Manu has suffered from omissions and interpolations. In support of his opinion, the learned author writes on page 112 of his treatise (7th edition) that though one text of Manu enjoins that "a man may only marry a virgin and that a widow may not marry again except in the case where the husband has died before consummation," there are two other texts which appear to recognise and sanction the second marriage of a widow. This contradiction, according to him, appears to arise from the deliberate omission of a part of the original text in an earlier portion of the same chapter It seems from the above that the prohibition against second marriages of women upon their widowhood has no foundation either in early religious texts or in the customs observed by the early society We ardently wish, therefore, that the Hindu society will soon change its static mentality and adopt a new custom consistent with the new needs of the present day Lady Vidyagauri Nilkanth has expressed the same desire of hers very recently in her presidential address of the seventh session of the All-India Women's Conference held at Lucknow on the 20th December last. She has said among other things that prohibition of widow marriages needs an urgent reform by the Hindu Society

As regerds the right of remarriage on divorce (except in the case of those Hindu women who are not allowed to dissolve their marriage during the life time of their husbands under the general Hindu law) one and all women of all the communities are at liberty to contract fresh marriages on the dissolution of their marriage as if the prior marriage had been dissolved by death Thus the Hmdu, Jain, Sikh and Buddhist women married under the Special Marriage Act as amended by Act XXXIX of 1923 and women of other communities coming under it, also Christian women, are given this right by Sec 57 of the Divorce Act and the Parsee women are accorded the right by Sec. 43 of the Parsee Marriage and Divorce Act. The women of the Mahomedan and Buddhist Communities enjoy it under the Mahomedan and the Burmese Buddhist laws respectively The Marumakattayam Act, though it does not expressly provide for it, dissolves the marriage on death of or divorce by either party and as a natural consequence of it, either party is allowed to marry again and it is quite a recognised custom in this community in Malabar

XI

RIGHT TO MAINTENANCE UNDER HINDU LAW.

LET us now examine the legal position of our women as regards their property rights. This will, once again, take us to the comparative study of the proprietary legal satus of women of the various communities and in its turn, will supply a driving force to those communities which are static in the field of social reform relating to the emancipation of their women That is because, this right plays a predominant role in determining the inferior or superior status of the womenfolk

For our purpose, we mention the following main property rights which deserve the consideration most. They are .—

(1) Right of maintenance, and

(2) Right of succession and inheritance.

To take up the first right—the right of maintenance—of our women in their state of a daughter or a married woman,* it is well to be noted that the right is almost uniform in the case of women of every community. The widows, except the Hindu widows, do not enjoy this right but they, instead, are entitled to a specific share in the property of their husbands after their deaths The case of Hindu widows is quite different. They possess a scantily recognised right of succession to the property of their deceased husbands. When they do not get a chance of inheriting the estate of their husbands which, in fact, they hardly get, they are entitled to maintenance out of their husband's separate property or also out of the property in which their husbands were coparceners at the time of their death We shall deal, separately, with this right of the Hindu widows in detail later on at the end of this chapter lest any confusion might arise in our present discussion of the right of the women as daughters or

*By using the words "right of a daughter, or a married woman etc we mean their right in their father's or husband's property, as the case may be

wives. The personal laws of all the communities provide the daughters and wives under them with this right on the ground of relationship between the parties—daughters and fathers, wives and husbands This peculiar relation ship between the parties creates an obligation on the fathers or the husbands to maintain their daughters (gene rally unmarried daughters) or wives (in this case so long as the marriage relation subsists) as the case may be The Mahomedan law, even, goes a step further and it casts a liability on a mother, if she is in easy circumstances and if the father is poor, to maintain her minor daughter

We, now, propose to deal with this right of a daughter and a wife under every communal law in vogue separately and see for ourselves the nature and extent of such a right Taking the case under the Hindu law first we find that the Hindu law enjoins a father to maintain his un married daughter* and a husband, his wife This obliga tion on a Hindu father or husband, arises from the very existence of the relation between the parties and it is pre-sonal in character On the death of the father or husband the daughter or the wife, as the case may be, is entitled to be maintained out of the deceased s estate The right follows the estate and whoever inherits it, is obliged by the law to maintain her from the estate. The obligation is personal in character, only against a father to his unmarried daughter and against a husband to his wife And, therefore, her right against her father or husband, as the case may be, is independent of the fact whether he possesses any property or not No other person is under a perosnal obligation to maintain an unmarried daughter or the wife of a Hindu Even an heir of the deceased, except his son in certain cases, is not personally liable to maintain the deceased s wife or daughter His obligation extends only to the estate of the deceased The reason is that the estate is inherited subject to the obligation to provide out of the estate maintenance for those persons

* Under Hindu law a daughter up to her marriage is regarded as a member of her father s family but after marriage she becomes a member of her husband s family and thereafter her husband is liable to maintain her

whom the late proprietor was legally or morally bound to maintain.

If a husband or a father is a member of a joint family, his wife or unmarried daughters are entitled to maintenance from the joint family property. After his death, the right of the daughters follows the coparcenary property in the hands of the survivors if the deceased is governed by the Mitakshara school and his share in the hands of the heirs if the deceased is governed by the Dayabhaga school and provided they do not chance to inherit to him It should be noted here that the Dayabhaga school does not recognise the rule of survivorship like the Mitakshara one, in the case of joint family property Therefore, a member of a Dayabhaga joint family holds his share in quasi severalty so that it passes on his death to his heirs as if he was absolutely siezed thereof, and not to the surviving coparceners as under the Mitakshara school This being the law, a daughter is entitled to maintenance only according to the Mitakshara school, while a daughter governed by the Dayabhaga school has the right to succeed to her father's share in the coparcenary property as his heir provided the deceased leaves no male issue and widow after him, otherwise, she is also entitled to maintenance from the share in the hands of the male issue or issues or the widow of the deceased

A Hindu wife is also entitled to separate residence and maintenance, if she is compelled to live apart from her husband by reason of his misconduct or by his refusing to maintain her in his own place of residence or for any other justifying cause But this should not be understood to mean that unkindness not amounting to cruelty or that the husband has taken a second wife, or ordinary quarrels between husband and wife, justify the wife in leaving her husband's house and to seek for separate maintenance. Keeping a concubine in the house or treating her habitually with such cruelty as to endanger her personal safety is a good ground for enforcing the right by a wife But it should be remembered that the wife has to lead a chaste life in this case, otherwise, she forfeits her right even though it is secured by a decree

Apart from the right under the Hindu law, a daughter or a wife is provided with the right under S 488 of the Criminal Procedure Code, 1898, if her father or husband, as the case may be, neglects or refuses to maintain her, though he has sufficient means. The court having the jurisdiction in the matter may, upon proof of such neglect or refusal, order the father or husband to make a monthly allowance for the maintenance of this daughter or wife at such monthly rate, not exceeding one hundred rupees on the whole, as such court thinks fit

The general rule is that a married daughter of a Hindu has no right of maintenance in her father's property According to Hindu law, a daugbter on marriage ceases to he a member of her father's family and becomes a member of her husband s family After her marriage she is entitled to be maintained by her husband and after his death, *out of his estate* We have already seen her right as a wife and we shall see later on, her right as a widow At present we are going to examine whether she has any right of maintenance in her father's property at any time and in any case after the marriage In Bombay it has been held that though a father is under a moral obligation to maintain his widowed daughter who has no means of support, the moral obligation does not become *transformed into a legal obligation after* his death as against his estate in the hands of his heirs But the correctness of this ruling has been doubted in a Bengal case, where the opinion was expressed that she is entitled to such right provided she is unable to obtain maintenance from her husband s family The Baroda Legislative Assembly holds the same opinion as the Bengal courts A widowed daughter in the Baroda State has been recently made legally entitled to such right in her father s family provided she is unable to obtain maintenance from her husband s family and there are sufficient means in her father s family She is to get such maintenance like other co-dependants in the family

The case of a Hindu widow is an exceptional one No legal system other than the Hindu one is so pathetic in ts attitude towards its widows. When all the other

legal systems recognise a widow's right of succession and inheritance to the estate of her deceased husband, the Hindu law, practically, does not recognise it but instead, it recognises her right to maintenance, and thus reduces her state to that of dependence on others.

Thus a Hindu widow who does not succeed to the estate of her husband as his heir, (in exceptional cases, she gets a chance of succession), is entitled to maintenance out of her husband's separate property and also out of the property in which he was a coparcener at the time of his death No person is legally obliged to maintain her out of his own property except her son who is made personally liable by the Hindu law to maintain his mother As regards others, her only right of maintenance is out of her husband's estate That estate may be in the hands of his male issue or it may be in the hands of his coparcener He succeeds or takes by survivorship the property of the deceased if he was joint subject to the obligation to provide for such maintenance

At the same time it is to be remembered that her claim for maintenance is not *ipso facto* a charge upon the estate of her deceased husband, whether joint or separate, until it is fixed and charged upon the estate So long as it is not so fixed or charged, it is liable to be defeated by a transfer of the husband's property to a bona-fide purchaser for value without notice of the widow's claim for maintenance It is, further, liable to be defeated if the property of the deceased is sold away for his debts or where it is the joint family property, for debts binding on such family The result is that a widow's right to maintenance is one of an indefinite character which, unless made a charge upon the property, is enforceable only like any other liability in respect of which no charge exists This state of things has reduced her legal status to that of dire dependence on the heirs or coparceners of her husband and she is at the entire mercy of them If her husband has left no property either joint or separate, no one in her husband's family except her own son is under any legal obligation to maintain her.

Formerly, the Bombay High Court had laid down that "where a widow of one of the near members of the family, such as a father, son or brother, is actually destitute, she has a legal right to be maintained by the other members even though they are separated from her late husband and possess no assets upon which he or she ever had a claim But the cases decided in this light were, however, exhaustively examined and overruled in a later decision * The law, as it is applied at present, in all the different High Courts, is the same favouring the later view of the Bombay High Court

As to the amount of maintenance, there is no hard and fast rule laid down in the Hindu law Every case has its own peculiar facts but it can be said that regard must be had to the value of the deceased's estate, the position and status both of the deceased and the widow, her reasonable wants, etc It may be said here that Sjt. Harbilas Sarda has brought a bill in the Legislative Assembly which aims at fixing the amount of such maintenance

Lastly, this right of a widow like that of a wife is conditional upon leading a life of chastity If she becomes unchaste, the right is forfeited even if it has been secured by a decree or by agreement. But if she returns to a moral life, she is entitled to "bare or what is also called starving allowance i.e food and raiment just sufficient to keep her body and soul together Also a widow by remarriage forfeits her right of maintenance. Such is the view shared by all the High Courts of India except the Allahabad High Court which has held and still holds that a widow who is allowed to remarry according to the customs of her caste does not by remarriage forfeit her right to maintenance out of the estate of her first husband.

From the above, one can say without hesitation that the legal position of a Hindu widow is most deplorable if she does not chance to inherit her husband which chance

* Refer to p. 608 Mayne's Hindu Law and Usage.

she rarely gets in the Hindu society † The fact that she is entitled to be maintained at the cost of the family property only and that she hardly gets a chance of succession which, even, if she gets, does not extend beyond the reason for it viz her claim to maintenance, has reduced her legal position to utter helplessness Many a time it so happens that she might have lived in easy circumstances during the lifetime of her husband, but after his death, she has to stretch her hand before others for merely a pittance to keep her body and soul together. This idea is really distressful and the present state of things, therefore, really wants a thorough change at the hand of the Legislature, as early as possible

† A Hindu widow cannot inherit the property of her husband if the husband has left a son, grandson or great grandson who are the preferential heirs to her And where her husband is a member of a joint family, she is not entitled to inheritance at all under the Mitakshara school, but she is entitled to such inheritance under the Dayabhaga school, provided her husband has left no preferential heirs above mentioned. The law on the subject will be dealt with by us in greater detail hereafter It is sufficient to say, for the present, that even this sparingly recognised right does not go beyond the reason for it, viz., her claim to a personal maintenance, with the result that she not only possesses limited ownership in the property, but she does not become a fresh stock of descent

XII

RIGHT TO MAINTENANCE UNDER OTHER LAWS

WE, now, turn our attention to the other sections of the women of the Hindu community which are not governed by the provisions of the Hindu law The first section comprises of women governed by the Marumakattayam Act and the second one, women governed by the Special Marriage Act. It is to be re called here that we are to deal with the right with regards to a woman in her state of a daughter and of a wife, because she as a widow, under both the Acts, possesses a higher right of inheritance instead of the right of maintenance like her widowed sister of the other communities

Thus the Marumakattayam Act provides that "the wife and the minor children, as also unmarried major daughters, shall be entitled to maintenance by the husband or father as the case may be The Act, further, provides that "they shall at the same time be entitled to maintenance out of their Tavazhi or Tarwad properties."* The amount of maintenance will be proportionate to the income and status of the Tarwad and the courts awarding such maintenance, take into consideration also the position and means of the persons against whom it is claimed and the reasonable wants of the person (here a daughter or a wife) claiming maintenance If she lives outside the Tarwad house, she is still entitled to such maintenance provided she is not living away from the house for any improper purpose. Thus, a wife is not entitled to maintenance from the husband as well as from the Tarwad property, if she refuses to live with her husband without a just cause She also forfeits her right on her renouncing Hinduism.

Also, it is well to be noted here that the Act is more liberal in defining 'maintenance than the Hindu or the Mahomedan law Maintenance under the Hindu and

* Joint family property under the Marumakattayam Law of Inheritance. The joint family is known as Tarwad.

the Mahomedan laws means and includes food, raiment and marriage expenses (if the party to be maintained is an unmarried daughter) But the Marumakattayam Act goes a step further and defines maintenance as meaning and including not only food, raiment and marriage expenses of unmarried daughters, but expenses of education, including English education, and of medical treatment and such other expenses of an "Anandravan" as come under the category of "Menchilavu."

The Special Marriage Act governing the Hindu Jain, Sikh and Buddhist women along with some women of other communities who have renounced their creed and have married under the Act, does not expressly provide these women with the right to maintenance against their fathers or husbands as the case may be. Still it cannot be said that these women are devoid of this right. They do possess the right, though the Special Marriage Act is silent with regard to it, under S 488 of the Criminal Procedure Code which extends to the whole of India and governs every community of the country without any distinction of caste or creed. How and when the section is applied is dealt by us already in our discussion of the right of the Hindu daughters and wives It need not be said that the right of these women continues up to the life-time of their fathers or husbands, as the case may be, for, after the death of the latter, they are entitled to a higher right of succeeding to a definite share of the deceased's property.

Similar is the case with the Parsee and Christian women They are also governed by S. 488 of Cr Pro Code, 1898, being not expressly provided for by their respective communal laws

But the Mahomedan law expressly makes a provision regarding the maintenance of a daughter or a wife It enjoins a father to maintain his female children till their marriage or during divorce or widowhood But the Madras High Court seems to take a contrary view in 36 Mad. 385 as regards maintenance of a widowed or divorced daughter. Her right even extends against her mother.

When her father is indigent and her mother in affluent circumstances, the obligation to maintain her devolves upon her mother, of course, with a right of recourse against the father, should his condition subsequently improve A Muslim father is under a statutory obligation to maintain his daughter and if she is neglected or refused maintenance she can enforce her right under the provisions of the Criminal Procedure Code, against her father provided he possesses sufficient means to provide her

The case of a Mahomedan wife is somewhat different The general rule is that a wife is entitled to maintenance from her husband and *prima facie* the Mahomedan law seems to make a husband liable to maintain his wife..

But when we read between the lines of the law, we find to our great astonishment, that this liability of the husband or the right of the wife exists so long as the wife is capable of rendering service to him, therefore, a wife who is too young for matrimonial intercourse or who is refractory and refuses herself to her husband without lawful cause or who is placed beyond his control, has no right to maintenance from him This qualification against the wife has its reason behind the very object of the Mahomedan marriage with an easier divorce

However, when she is entitled, she can enforce her right against her husband by a suit in a Civil Court and get the decree passed against him and enforced. She can enforce her right, also, under the provisions of Sec 488 of the Criminal Procedure Code, 1898 But it should be remembered that the right continues so long as her marriage subsists and not up to her natural life The right ceases on her divorce or on her becoming a widow A divorced wife is, however, entitled to maintenance during her period of probation which is technically known in the Mahomedan Law as the period of 'iddat, (but not after the expiration of the 'iddat) unless the marriage has been dissolved for some cause of a criminal nature, originating from the woman or unless, being subject to Shiah or Shafi Law, she is irrevo-

cably divorced and she is not pregnant. The widow, however, gets a share in the inheritance

There is practically no difference between the Shiah and Sunni schools on the question of maintenance of wives But under the Shiah law which recognises Mutaa (temporary) marriages, a mutaa wife is not entitled to maintenance unless there is a specific stipulation to that effect.

The Burmese-Buddhist law also recognises this right of maintenance of a daughter or a wife against her father or the husband, as the case may be She is given this right also under the provisions of the *Criminal Procedure Code* At the death of a Buddhist father, her right follows his property in the hands of his widow who is the first heir in the order of succession of the Buddhist law. When the widow has not survived him, she succeeds to her father along with his brother and then the question of maintenance does not arise. A Buddhist wife is also entitled to claim maintenance against her husband like her Hindu and Mahomedan sisters even when she lives apart on account of his cruelty.

XIII

RIGHT OF SUCCESSION UNDER HINDU LAW

LASTLY we propose to deal with the right of succession and inheritance of our women to the property of their fathers or husbands as the case may be under their respective communal laws. It is repeating a truism to say that this right is also one of the most important rights in determining the legal as well as the social status of the women folk, the other half of the entire society And to day, when the whole world is focussing its attention towards the emancipation of its women it is trusted, India will not lag behind the rest of the world. The juxtapositional treatment of this one of the most important and valuable rights of our women under their different personal laws will we hope amply show to the reader where and to what an extent the different legal systems need the aid of the legislature so as to place our women though not on a higher but on an equal footing with men. For, 'it is the legal rights an individual is clothed in, that determine the sphere of his or her evolution of character and any amonnt of higher education would do but little good to him or her if he or she he denied those rights, in respect of personal independence and full porprietary ownership, in the words of Mr V V Joshi one of the members of the Baroda Government Hindu Law Reform Committee

To take the case of Hindu women first, one has to admit that their legal position is not only anomalous hnt most deplorahle The law of inheritance and succession which governs them is most unsatisfactory and unjust because the law secures them a very scantily and sparing ly recognised right of succession to the estates of their fathers or husbands in comparision with such right enjoyed hy their sisters of other commnnities And this is the state of things under all the different schools of the Hindu law One feels really oppressed with these inequitahle principles of the Hindu Law However, this inferior position of the Hindu women has its reasons

behind the writings in those old and archaic so-called sacred documents, written by Manu, Baudhayana, Visistha and others of their type, to the effect that "woman is devoid of sense and, therefore, incapable to inherit."

Even this scantily and sparingly recognised right which the Hindu women enjoy to-day is a growth of centuries and an inevitable result of cases that used to present difficulties in their claims of maintenance when the property passed to distant heirs, for these women being not allowed to inherit, were entitled to maintenance only from the estates of the deceased in the hands of his heirs, near or remote. The difficulty used to arise when a male died without issue and he, at the time of his death, was the last survivor of the copartcenary or had been separated from the other members of the joint family. For, in such cases, the property of the deceased having passed out of his family into the hands of the distant members of the family who might be utter strangers, the widow or other female members whose only right in the property was that of maintenance, were put to incalculable hardships It is only with a view to put an end to such occasions that a limited right of succession for these women came into being. The law-givers of the time thought it desirable that the property of such a deceased should remain in the possession of the women of his family for their support rather than that it should pass out of the family and into the hands of very remote heirs. In this way, their right as heirs, properly so-called, has arisen. But it should be noticed that this right does not extend beyond the reason for it, viz., their claim to a personal maintenance The old preference for the male line over the female, limits the right, so as to prevent the property passing absolutely out of the family into the hands of male strangers, who have married the daughters The result is that though their right of inheritance and succession is recognised after the deceased's* son, grandson and great-grandson who are preferential heirs to them under

* We here discuss the right of daughters and widows and therefore the word "deceased" here should be understood as fathers or husbands, as the case may be

the Hindu law as it is applied at present, they are not allowed to become a fresh stock of descent so as to transmit the inheritance to their heirs and further as a necessary corollary of it, are not allowed to dispose of the corpus of the property that they inherit unless there is any legal necessity for so doing i.e they are allowed only a limited as against an absolute interest in the estates of their fathers and husbands

This is the law that is, now, applied to the Hindu women as regards their right of succession and inheritance and the law is uniform under all the schools and sub schools of the Hindu law except under the Bombay school which recognises a somewhat higher and greater right of the daughters governed by it, though the widows enjoy the same limited right under it as they enjoy under the other schools. The Bombay school, it seems is more liberal in interpreting the proprietary capacity of its daughters than the other schools of Hindu law We shall see how far they are favoured by the Bombay school in comparison with the position of their sisters under the other schools when we shall attempt to discuss this right of theirs in detail presently

We have already said above that a Hindu daughter, like a Hindu widow, possesses a restricted and a meagre right of inheritance and succession to the separate property of her father *Prima facie*, she is not entitled to succeed her deceased father The right arises only in the absence of all the preferential heirs of the deceased So long as any one of such heirs is living, she has no chance of succession unless the heir is disqualified by law Thus when we look to the order of succession to males, given in the Hindu law, we find her place to be the fifth among the several heirs The first four heirs who are the son, grandson, great grandson and widow of her deceased father are preferred to her in the order of succession This fifth rank of hers is recognised uniformly by all the schools of the Hindu law Again, if her father is a member of a joint family and remains joint at the time of his death, the daughter has no right of succession to the share of her father in the joint family even if there is no preferential

heir then living, if she is governed by the Mitakshara school. The reason for so excluding her lies in the principle of survivorship recognised by this school. It is so recognised by this school that only certain male members acquire an interest by birth in the family, in the joint family property These male members are called co parceners. On the death of any of them, his interest passes to the surviving coparceners. The Dayabhaga school does not recognise the rule of survivorship. It recognises only one mode of devolution of property, namely, succession. The result is that a daughter of a Hindu governed by this school can succeed to the share of her father in the joint property, the share which the deceased held in quasi-severalty Thus a daughter under the Mitakshara school, can, in no case, succeed to her deceased father's interest in the joint family, while a daughter under the Dayabhaga school does succeed to such interest provided there is no preferential heir living at the time of her father's death. The above discussion amply substantiates our view shown above that the right is sparingly recognised in the sense that she hardly gets a chance, it being very remote, to succeed to her father.

The right, over and above being uncertain and indefinite, is restricted in character. It is restricted in the sense that the rights over the property which it confers upon its possessors, in our case, daughters, are limited and not absolute Thus a Hindu daughter succeeding to the estates of her deceased father, takes a limited interest. She has no power to dispose of the corpus of the property except in cases of legal necessity She is entitled only to the income of the property inherited by her. The estate passes not to her heirs but to the next heirs of her father on her death. The law is the same under all the schools of the Hindu law except the Bombay school. The Bombay school leans more in favour of women's and particularly of daughters' proprietary capacity. In other parts of British India, the principle is that property inherited by a woman cannot stay in the family into which she has married, but must revert in every case to

the family in which she was born The principle is not followed by the Bombay school. On the other hand, the governing law, in the Bombay Presidency, is that a female inheriting property from a male or a female takes it absolutely except when she inherits a male into whose gotra she has come by marriage and in this case only, she gets a limited ownership over the inherited property Thus, a Hindu daughter governed by the Bombay school always takes an absolute interest in the separate property of her father and mother, provided she gets a chance to succeed them, unlike her sister under all the other schools of the Hindu law She becomes the absolute owner and can use it in any way she likes On her death it passes to her heirs and not to the heirs of her parents.

The mode in which Hindu daughters inherit *inter se*, is also quite different from the ordinary mode recognised by other legal systems prevailing in India The general and ordinary mode is that where there are more than one daughter, they all take the whole or the part, as the case may be, collectively and then divide equally between themselves. But under the Hindu law the mode is not only different from the above general one, but it also depends upon the school of law which governs the case Thus, according to the doctrine of the Bengal school, the unmarried daughter is first entitled to succession, if there be no maiden daughter then the daughter who has, and the daughter who is likely to have male issue, are together entitled to succession, and on failure of either of them, the other takes the heritage Under no circumstances can the daughters who are either barren or widows destitute of male issue or mothers of daughters only, inherit the property The law of the Mitakshara does not make any distinction between married daughters who have or who are likely to have male issue and those who are barren or destitute of male issue like the Dayabhaga school But then it makes the distinction between indigence and wealth According to it, the inheritance first goes to unmarried daughters, next, to daughters who are married but who are indigent and lastly

to daughters who are married and are enriched. The Benares school follows the Mitakshara school but the Mithila differs from the above two in this that it neither makes any distinction between married daughters like the Dayabhaga nor between indigence and wealth like the Mitakshara. The difference between the Dayabhaga and the Mitakshara modes of inheritance lies in the fact that the former alone follows the doctrine of religious efficiency. Though a daughter under the Dayabhaga could offer no religious oblations herself, her right was put up on the ground that she produced sons who could present oblations to her deceased father. The Mitakshara follows the secular principle that the daughter who is already settled in the world has an inferior claim to that of one who has her fortune to seek and to one who, though married, is poor It is well to be noted that no distinction is to be found in the earlier texts as to the capacity of one daughter to inherit in preference to another on any religious principle. The Baroda Government makes no such distinction between indigence and wealth or between married and unmarried daughters in case of succession to the estates of their parents.

Again, it is worth while knowing that when there are two or more daughters of the same class, they take jointly except in the Bombay Presidency, with rights of survivorship. If they choose to divide the property for the greater convenience of enjoyment, they can do so, but thereby they cannot create estates of severalty which would be alienable or descendable in any different manner. Any one daughter may alienate her life-interest in the property but not so as to affect the rights of survivorship of other daughters. But in the Bombay Presidency, there is neither the joint holding or survivorship. Each takes her own absolute share. This difference is due to the fact that the Bombay school confers upon a Hindu daughter an absolute estate while the other schools do not confer upon them an absolute but a limited estate.

Thus, we have seen that the general Hindu law does recognise a daughter's right of inheritance though scantily and sparingly. But there are many tribes in Northern

India, especially in the Punjab and Oudh, who exclude daughters from inheritance on grounds of special family or local custom In Northern India, the principle of agnation prevails in its strictest form And the above tribes, not only prefer agnates to cognates but they absolutely exclude the cognates from succession with the result that even such near relations as daughters and their sons are debarred from inheritance

XIV

HINDU WIDOW'S RIGHT OF SUCCESSION

THE legal position with respect to this right of succession and inheritance of a Hindu widow is much analogous to that of a Hindu daughter whose legal position with respect to this right we have dealt with above. The only conspicuous difference between them is found in the order of succession where a Hindu widow ranks just before a Hindu daughter, the widow's place being fourth in the order. Thus, a Hindu widow, no matter whether she is governed by the Mitakshara school or the Dayabhaga one or whether her husband was joint or separate at the time of his death, can, in no case, inherit to her deceased husband so long as any one of the sons, grandsons or great-grandsons of her late husband is alive at the time of his death. The above mentioned heirs, being preferential heirs to her, disentitle her to inherit so long as they are there at the time of her husband's death. It is only when no one of them is in existence that she may become entitled to succeed to her late husband. She becomes so entitled if her deceased husband was separate or though joint, if he held separate property also In the latter case she inherit only the separate property of her late husband. But if he was joint and held no separate property, the question arises whether a widow is entitld to inherit her late husband's share in the joint family property. Here the two main schools—the Mitakshara and the Dayabhaga —differ between themselves According to the Mitakshara, the widow is not entitled to inherit the share of her late husband, and the share passes to the surviving coparceners The Dayabhaga, we have seen, does not recognise the rule of survivorship even in the case of joint family property And, therefore, a member of a Dayabhaga joint family holds his share in quasi-severalty so that it passes on his death to his heirs as if he was absolutely seized thereof and not to the surviving coparceners as under the Mitakshara law. A widow, therefore, under the Dayabhaga law, succeeds to the property, even though it may be joint, as her husband's heir provided there is no nearer heir than herself.

However, she takes, like a Hindu daughter, a limited interest in the property inherited by her except where she is allowed to take the property absolutely by the custom of the caste to which she belongs This limited interest is technically known in the Hindu law as the "WIDOW'S ESTATE after her denomination. † But a different rule prevails among certain Jain castes which entitles a Jain widow of the caste to an absolute interest in the self acquir ed property of her husband on the strength of custom We know that until a special custom to the contrary is esta blished, the ordinary Hindu law governs, *inter alia*, succession amongst the Jains and Sikhs. And, therefore, in the absence of a custom to the contrary, a Jain w dow, like her Hindu sister, takes a limited interest in her husband s estate similar to the 'Widow s Estate A custom, how ever to the contrary has been proved in several cases and it has been held in cases from Meerut, Saharanpur and Arrah in the district of Shahabad that among the Agarwala Jains, a widow takes an obsolute estate in the self-acquired property of her hnsband and that she has full power of alienation in respect of such property But, it has been held at the same time that there is no cns-tom which entitles her to an absolute estate in ancestral property left by her husband In the latter case she takes only a "Widow s Estate.

From the above discussion, one can see that thongh a Hindn woman—a daugbter or a widow—is recognised as an heir by the Hindu law among other heirs, she stands a very little chance of succession and whenever she stands such chance, the right does not extend beyond the reason for it viz her claim to personal maintenance Messrs. Harbilas Sarda and S C Gupta are not in the least exag gerating when they stated in their "Statement of objects

†"Widow s Estate is a peculiar feature of the Hindu law A Widow s Estate is a qualified estate as against an absolute one. It is qualified in the sense that though its possessor (in our case, a widow) is the owner of it so long as she lives she cannot alienate the corpus of the estate unless under legal necessity and the estate after her death devolves upon the next heir of her husband She is entitled only to the income of the property inherited

and reasons" for their "Bill to secure a share to Hindu widows in their husbands' family property," (the bill which, unfortunately failed to pass in the Legislative Assembly last year) that "A Hindu woman does not get any share in her father's property, nor does she get any in her husband's." Her right is practically a right to maintenance and no more except where she succeeds as a daughter and further only under the Bombay school of the Hindu law. Such a law of Inheritance has operated and still operates against the Hindu women with a disastrous effect and their lives are becoming difficult and distressful and often miserable, while the state of Hindu widows has become intolerable and in many cases appalling.

It is said from many quarters that a Hindu woman's legal position was not so much inferior as it is to day, under the early Hindu law. The law givers of the ancient times, they say, regarded woman as a co-owner of the property of her husband and as possessor of full proprietary rights. At the death of her husband, her right of inheriting his property was maintained on the basis of her status as a co-owner with her husband. Even where her husband was joint at the time of his death, she was accorded, it seems on reading some religious texts, the right to succeed to his interest in the undivided family. This superior position was enjoyed by the Hindu women in the Vedic period. But the subsequent period was the period of retrogression for these women. This was the age of Manu, Baudhayana, Vasishtha and others who deprived women of their rights and declared them incapable of inheriting and possessing independent rights. They said "The father protects a woman in her childhood, the husband during her youth, the son in old age, a woman has no right to independence." Baudhayana and Vasishtha mention no females in their lists of heirs and the former expressly states on the authority of a text of the Vedas, that women have no right to inherit. But Baudhayana, it seems, has misinterpreted the text. "The text can be so interpreted as to lend no support to his assertion," writes Mr. Mayne the learned author of the "Hindu Law and Usages." Whether the early writers did so voluntarily or otherwise is not the

question at issue, but we can say this much against him and against his contemporaries that it was they who are the most responsible for relegating the status of the Hindu women to that of complete dependency

But with the passing of times, as new needs and requirements of the society began to grow, condition and circumstances also began to change The process of disintegration of the joint family and the difficulties which the claims of the female members maintenance used to generate, especially when the property passed to the most distant relations of their farthers and husbands, moved the social reformers of the time to advocate the woman s cause in face of adverse authorities of no mean standing and weight It was Vijnaneshvara, who flourished in the latter part of the eleventh century, that first championed the cause of these unfortunate women He introduced certain innovations in his well known commentary—the Mitakshara—on the code of Yajnavalkya, in which he asserted *inter alia* a woman s right of succession to the separate property of her father or husband provided the deceased left no son, grandson or great grandson and in the case of a daughter, also a widow It seems the learned auther of the Mitakshara must have heen very cautious in propounding his momentous innovation lest he might meet with the stout opposition The inference can be drawn from his restricting the right to the separate property only Those were the days when the joint family was the normal condition of the Hindu society and separate holding an exception. It is on account of this state of things that the proposition of Vijananeshvara passed off with the least resistance After the death of Vijnaneshvara, the next reformer of outstanding merit was Jimuta Vahana. He is said to have flourished somewhere between the 13th and 15th century It is he who has written the Dayabhaga which is not a commentary on any particular code like the Mitakshara hut it purports to be a digest of all the codes. He, further, asserted the right of succession of a widow to her husband s property whether he died joint or separate But as Mr Sirvaya, the author of 'Hindu Women s Estates remarks, the author of the Dayabhaga hemmed in such

rights with restrictions as were necessary to gain public favour, and, therefore, he, in his turn, restricted the right to limited interest in the property inherited. There being no reformer of outstanding merit after Jimuta Vahana, upto the advent of the British rule in India, the further growth of Hindu women's rights was stemmed. Even after the advent of the British Rule, the legal position with respect to this right is not in the least raised. This is because of its strict and scrupulous following of the Imperial policy of "non-interference" in matters of religion and personal laws of the people of India. The result is that the legal status of the Hindu women is not only not raised but it has been lowered in some cases. Those who hold this view, base their contention on the facts that the Pandits who were engaged to advise the judges of the British Courts in India on topical points of the Hindu law, were not always impartial and correct, also the learned judges had to interpret the law as they found in the translations of the text, the correctness of which was doubtful. But since their decisions have now become the law, they cannot be overruled They have their binding effects on all the courts And the present law can be altered or reformed only by seeking the help of the legislature

The above historical survey of how the legal status of the Hindu women has been changing from one period to the other will amply show to those who attach religious sanctity to the present case-made law that it is not in complete accordance with their ancient religious texts which gave to their women higher rights than what they enjoy to-day. It is now high time that they should take stock of this fact and join hands with those who work for the amelioration of the miserable condition of the women under the Hindu Law. We request the readers of this Thesis to refer to Mr. V V. Joshi's small brochure "Hindu Women's Property Rights," wherein the learned writer gives a good many quotations from the ancient texts which recognised women's right to a very great extent and that will, we hope, correct the mistakes of those who believe that the present legal position of our women is the same as was ordained for them by their ancient holy texts

But it is a happy sign of the day that the miserable and distressing condition of the Hindu women has now attracted much attention of the educated and cultured section of the Hindu community, though the orthodox section which forms the majority of the community, still remains incorrigible in their views and indifferent if not obstructive in spite of their seeing and oftentimes experiencing the evil results of the present inequitable law for their women Messrs. Harbilas Sarda and S C Gupta had brought a bill in the Legislative Assembly with a view to relieve the Hindu women from their present miserable condition and to get them a share in their husband's property, either joint or separate But the bill was not passed partly on account of the opposition from the orthodox section and partly on account of the Government's "non interference" policy Apart from that, the bill was so drafted that it seemed to prefer the widow to the son of the deceased. This fact increased the number of members in opposition However, the fact remains that attempts in this direction are being made in the Legislatures in addition to those made outside.

Also it is gratifying to note that even some progressive Native States have realised the needs of the changing times Some have already introduced and some are thinking of introducing certain Legislative enactments to satisfy those needs. Thus the States of Mysore, Cochin and Travancore have passed regulations which purport to give the Hindu women of their respective territories the right of succession and inheritance along with the children of the deceased The Mysore State had appointed a committee to gather facts and to recommend the change to be brought about in the general Hindu law The present enactment giving the positive right of inheritance to the Hindu women is based upon the recommendations of the committee Similarly the States of Cochin and Travancore have conferred upon their women the positive right of succession. The widow, under those regulations, takes with his children a moiety of the self acquired separate property of her husband if he is joint and has undivided heirs, if there are no such heirs, the widow or children or

both are entitled to the whole of such property. The Baroda State has also introduced some reforms in this direction. A committee was appointed (The Baroda Government Hindu Law Reform Committee) to gather facts and to recommend how far it is advisable to change the present law of ownership and inheritance so as to relieve the women concerned. The Committee submitted its report with certain recommendations to confer upon the Hindu women of the State a certain and definite right to the property of their husbands and fathers The State Legislature has recently passed the bill after this recommendations giving the daughters one-fourth of what their brothers get. A widow is, now, given an equal share with that of each son of the deceased both in the separate as well as in the joint family property of her husband. If the deceased died joint and left no son, she is entitled to what her husband would get if living She is further provided to get her share partitioned whenever she wills. However, the widow does not become a fresh stock of decant After her death the property passes not to her but to her husband's heirs. A daughter, however, takes absolutely.

Will the British Government, still, lag behind and allow its unfortunate and helpless Hindu women to rot in misery and destitution even when the neighbouring Native States have realised the needs of the New Age and have given a lead to bring about the change to those who are invested with legislative powers? Or, will it at least appoint a committee to inquire and ascertain to what extent and in what respects, any reform is essential to bring about the complete emancipation of the Hindu women, if it does not wish to incur the odium of the general orthodox public? We wish the Government will, now, move from its scrupulous apathetic attitude towards the iniquities that are meted out to its Hindu women and will eradicate those iniquities that have worked tremendously against those unfortunate persons since centuries.

XV

RIGHT OF SUCCESSION UNDER THE MARUMAKATTAYAM AND THE INDIAN SUCCESSION ACTS

THE case of Hindu women governed by the Marumakattayam Act and those governed by the Special Marriage Act is quite different. These two Acts do away to a very great extent not only the anomalous character of the Hindu law of inheritance but they clarify the issue of inheritance and considerably improve the legal position of women from the point of view of proprietary rights. The Special Marriage Act is the most liberal law of all the other laws in conferring *inter alia* the right of inheritance and succession to its women And the Hindu women contracting civil marriages under the Act are conferred upon all the benefits the law entails upon the women of other denominations coming under it, as all of them are governed by the Indian Succession Act like the Indian Christians

The Marumakattayam Act provides that on the death of a Marumakattayam male leaving him surviving a widow or children or both, she or they shall, if he has undivided Marumakattayam heirs, be entitled to one half share in his self acquired and separate property and if there are no such heirs, such widow or children or both shall be entitled to the whole of such property Even where the husband is a non Marumakattayam male and the widow is a Marumakattayam female, she inherits his self acquired and separate property in the manner given above It should be noted, however, that the remaining half devolves upon his own Tavazhi i e his mother and the mother's descendants in the female line

Though a woman governed by the Act has the only right to inherit a moiety or the whole, as the case may be, of the separate and self-acquired property of her husband along with his children if there are any, still she becomes the custodian of the whole of such property until a division is effected Also, though as a widow, she has more or less a scanty right, as a daughter or mother, she possesses a more extensive right.

The law of succession and inheritance of Hindu, Jain and Sikh women married under the Special Marriage Act is not what is given in the Hindu law. In matters of succession and inheritance, they are governed by the provisions of the Indian Succession Act. And, therefore, to determine to what extent these women are getting from the property of their fathers or husbands, as the case may be, we shall have to turn our attention to the provisions of the said Act. It is the Special Marriage Act that enjoins that succession to the property of any person governed by it shall be regulated by the provisions of the Indian Succession Act.*

But before we come to those provisions of succession and inheritance direct, we draw our reader's attention to the fact that the marriage under the Special Marriage Act effects the person's severance from the joint family if he is a member of that family at the time of his marriage under the Act.† Thus, we have not to see while dealing with the right of the Hindu women under the Act whether the property is joint or separate as we have to do when we deal with such right of their sisters under the Hindu law.

Now a careful study of the provisions of the Indian Succession Act, relating to intestate succession, at once brings to our notice that she (a Hindu, Sikh or a Jain woman—daughter or wife—) unlike her sister governed by the Hindu law, always and under all circumstances takes a definite share. Not only that, these provisions do not recognize any sex distinction with the result that a daughter ranks equally with her brother and takes an equal share with him in the properties of her parents. These liberal and equitable provisions really raise the legal position of a woman governed by the Special Marriage Act to a very high pedestal in comparison with that of a woman governed by any other communal law.

When we come to the provisions that are applied to the the case of a daughter, the above statement is amply sub-

* Vide S. 24 of the S M Act.

†Vide. S 22 of the S. M. Act.

stantiated Sec. 37 of the Act clearly and in unambiguous terms lays down that "where the intestate has left surviving him a child, or children, but no more remote lineal descendant through a deceased child, the property after deducting the one third share of his widow, shall belong to the surviving child if there is only one, or shall be equally divided among all his surviving children If there is no widow, the whole property devolves upon his child or children as the case may be And if that child is a fortunate daughter, she takes the whole of his property Similar is the rule when she succeeds to her mother's estate Here also she along with her brother takes the two-thirds of the mother's property to be equally divided between them, the remaining one-third devolving upon her father if he survives his wife But if he does not survive, the whole estate devolves upon the children who have an equal share in the property Anyway, she gets an equal share with her brothers in the property of her parent. It need not be said that the Act does not recognise the principle of "limited interest and therefore the daughter takes the share as an absolute estate with all the incidents of such an estate

A widow, on the other hand, is entitled to a definite share of one third of her deceased husband if he has left any lineal descendant. The share is increased to half when the deceased has left no lineal descendant but persons who are kindred to him, the other half going to those kindred. But if the desceased has left neither any lineal descendant nor any kindred, she takes the whole of the property of her husband In her case, also the reader is requested to note that she does not take what is called a "Widow's Estate under the Hindu law but she takes the whole or the part, as the case may be, absolutely

These rules of devolution and distribution of intestate estate are taken from the Statute of Distribution which is the law in England relating to inheritance and intestate succession Still this Indian Enactment is, in one respect, more liberal than the English law so far as a widow's share is concerned when there is no kindred of her deceased husband Under the English law, when a person

dies intestate, leaving his window only and no other kindred, the widow is not entitled to the whole of his personal estate but to one moiety only and the other moiety goes to the Crown. In such a case in India, the widow is entitled to the whole of her husband's estate.

The legal position of Christian women under the Indian Christian Marriage Act and the Buddhist women governed by the Special Marriage Act is exactly similar to that of Hindu women governed by the latter Act. The reason is that the same Indian Succession Act and the same provisions of it that are applied to the latter are being applied to the former, to wit the Buddhist women governed by the Special Marriage Act and the Christian women enjoy the same legal rights that their sisters of the Hindu (Jain and Sikh included) community who also avail themselves of the benefits of the Special Marriage Act either by contracting their marriages under the Act or by being the daughters of persons who have contracted the marriage under the Act enjoy.

The Parsee Law of Inheritance and Succession is really surprising to many of its students. Though the community is governed by the Indian Succession Act with regard to its inheritance and succession, it has preferred to be governed by the special provisions applicable to Parsees only in the Act which, in their turn, are not so liberal as those of the general succession Act. Not only that but these provisions, of succession are tainted with sex-distinction to a very great extent, so much so that a daughter takes one fourth of what a son gets and a widow one half of what the latter gets. The Parsee succession rules confer upon the women coming under them a status which stands approximately midway between those of the Mahomedan and the Hindu women. For, the rules are more liberal than the Hindu succession rules, but less liberal than the Mahomedan ones so far as the law regarding their women is concerned One indeed looks with wonder and pity at these inequitable rules when he thinks of the Parsee community which is well-known for its advanced and cultured views and for its ready adaptability to social necessities. We wish the

Parsees, who show high respect to their womenfolk, will take stock and render the position of their women, if not higher, equal to that enjoyed by women under the general provisions of the Indian Succession Act, by doing away with those discriminative provisions of their law of Succession and getting the general ones applied to them

If we take the case of a Parsee daughter first, we have said above that her share is a quarter of her brother's share and a half of her mother's. This can be easily seen from section 50 itself which runs as follows —

"Where a Parsee dies leaving a widow and children, the property of which he dies intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter

Also when her father dies leaving no widow, then the rule is that the property is to be divided, so that the share of each son is four times the share of each daughter Thus, in either case, her share is the quarter of what her brother gets.

But when she succeeds to her mother, the above sex distinction is not to be found She takes an equal share with her brother, though her father, the widower, takes double the share of each of the children if he survives his wife. If he does not survive her, the whole property is equally distributed among the children

The special rules that govern a Parsee widow are as follows —

(1) Sec. 50 of the Act which we have dealt with above in the case of a Parsee daughter entitles her to take a double share than what the daughter gets, but half of what the son gets in the property of her deceased husband dying intestate.

(2) Sec 55 of the Act, further, lays down that she is entitled to a moiety if her husband has died leaving behind him no lineal descendants but his parents or other relatives on the father's side But when he dies without leaving

any of the lineal descendants, parents or relatives on the father's side, the widow of the intestate is entitled to the whole of his estate.

It can be seen from the above that a Parsee woman is not accorded that equality in proprietary rights with a Parsee male. It need not be said that the former rights are in no way less important than the latter ones. A Parsee widow is likely to be very miserable in case her husband has not left behind him a very good estate but left, instead, a good number of children, provided she does not remarry, which she hardly does after her advanced age.

XVI

RIGHT OF SUCCESSION UNDER THE MAHOMEDAN LAW

THE Mahomedan law, though in many other respects it is very orthodox like the Hindu law, is more liberal and equitable in its branch of succession and inheritance than the latter According to both the Sunni and the Shiah schools—the two main schools of the general Mahomedan law—a Mahomedan woman is given a definite and certain share and is not excluded from inheriting her father and husband, even if the deceased has left behind him male lineal descendants as is the case under the Hindu law Also though, like the Hindu law, the provisions of the Mahomedan law of inheritance have also for their basis the passages in the ancient religious texts, the latter, unlike the former, provides its women a definite and certain share in the property of their father and husband. It will be interesting to quote the following passage of the Koran which Mr W H McNaughten gives in his "Principles and Precedents of the Mahomedan Law to substantiate our above statement. The passage runs as follows —

"God hath thus commanded you concerning your children A male shall have as much as the share of two females, but if there be females only, and above two in number, they shall have ⅔ parts of what the deceased shall leave, and if there be but one she shall have the half "*

Mr McNaughten eulogizes the principles of the Mahomedan law of inheritance very much He finds them as the most just and equitable of those found in any other legal systems. He says "in these provisions (provisions relating the law of Inheritance and Succession) we find ample attention paid to the interests of all those whom nature places in the first rank of our affection, and it is, indeed, difficult to conceive any system containing rules more strictly just and equitable.

Thus, upon the death of a Mahomedan intestate, his estate devolves immediately upon his heirs in specific

*The passage is quoted from Sale's Koran, p 127

shares. A daughter takes a share to the extent of $\frac{1}{2}$ or when there are two or more, to the extent of $\frac{2}{3}$ collectively, from the estates of her or their deceased father as the case may be, provided the deceased has left no son. Even when her deceased father has left a son, she takes as a residuary along with the son from the residue of the property i. e. property left after satisfying the shares of persons specified as sharers under the Mahomedan law. It should be remembered that the law is the same under both the Sunni and the Shiah schools so far as the right of the women under consideration. But though the daughter takes along with the son, she does not take equally with him. Here the Mahomedan law is accused of discriminating between the sexes. The son is conferred upon a double share, i. e. a son gets double of what a daughter gets. However, she gets a part of her father's estate always and since a "limited interest" is not recognised by the Mahomedan law as it is recognised by the Hindu law, she takes the property absolutely and without any qualifications.

But, it should be noticed, however, that it is only on one occasion that her definite share is reduced or increased, as the case may be. This occasion arises when after allotment of shares to the sharers, the sum total of the shares exceeds or fall short of unity. In the former case, if she has inherited as a sharer to her father along with other sharers her share of $\frac{1}{2}$ or the proportionate share in the $\frac{2}{3}$ of the property, suffers a proportionate reduction along with the shares of other sharers, provided she is governed by the Sunni law. The Shiah law is somewhat different. Under it, when the sum total of the Koranic shares exceeds unity, there will be no proportionate abatement of all the shares but the deficit is borne by a daughter or daughters in the case of the heirs of Group I and by the full or consanguine sister or sisters in the case of heirs of Group II only. No share of other sharers is thus reduced. This arrangement is called in the Mahomedan law as the "Doctrine of Increase." Similarly, when the sum total of the Koranic shares falls short of unity, a proportionate increase in the original shares is effected except in the share of the husband or wife governed by the Sunni or the

Shiah law And a daughter being one of the sharers, share is increased as the natural consequence of the doc trine The doctrine is known as the "Doctrine of Return" under the Mahomedan law and it comes into play when there is no residuary heir to take the surplus

A widow s right to inherit her husband s property is recognised under the Mahomedan law by reason of affinity Under both the Sunni and the Shiah laws of Inheritance, she takes ordinarily a $\frac{1}{4}$ share in the property of her deceased husband which is liable to be reduced to $\frac{1}{8}$ if there is a child *or* a child of a son, how low soever, provided her case falls under the Sunni law and it is liable to be reduced to the same extent if her case comes under the Shiah law by the presence of a child or a child s child If there are two or more widows they take the $\frac{1}{4}$ or $\frac{1}{8}$ (as the case may be) collectively to be distributed equally among them It is to be noted here that a widow always inherits her husband as a sharer only And, therefore, when an occasion arises under the Sunni law for the doctrine of 'Increase to come into play, her share is proportionately reduced Under the Shiah law, her share is not abated But when an occasion arises for the doctrine of Return to come into play, she, being not a blood relation of the deceased, is excluded from a Return in the presence of other sharers or even of the distant kinsmen. It is only on the failure of all of them that she, if governed by the Sunni law, takes by return and thus can prevent escheat to the Crown by her persence The Shiah rule is somewhat different. Shiah widow is never entitled to Return, not even when she exists alone, that is to say, a Shiah widow, unlike the Sunni widow, cannot by herself prevent escheat to the Crown

One more thing remains to be observed now and that is with reference to certain Mahomedan convert com munities Though the general rule is that after conversion to Mahomedanism, the rights and status of the convert become subject to the Mahomedan law, bnt if the convert to Islam carries his original laws and usages with him, he is to be governed by them even after conversion on the ground of custom Thus it has been often held by our

High Courts that the Khojas and Cutchi Memons in the Bombay Presidency, who were originally Hindus, are governed, in matters of succession and inheritance, by the Hindu law, in other matters they are governed by the Mahomedan law. The Hindu law of succession and inheritance is applied to them on the ground of custom. This custom is so well established among them that if a special rule of succession opposed to the Hindu law is alleged to exist among them, the burden of proof lies on the person setting up such a rule. Similarly, Molesalam Girasias of Broach, the Sunni Borahs of Gujarat, the Halai Memons of Porbandar in Kathiawar but not of Bombay, are governed by the Hindu law of inheritance and succession though they profess this Muslim religion. Among the Lubbai Mahomedans of the Coimbatore District in the Madras Presidency, a custom prevails under which they retain the rule of Hindu law excluding females from inheritance. And several families of the Mapillahs of North Malabar have been held to be subject to the Marumakattayam Law though they are Mussalmans.

This being the case, the women of the above mentioned Mahomedan communities add to the number of their unfortunate Hindu sisters so far as the right of succession and inheritance is concerned. But the Cutchi Memons of British India now get themselves governed by the Mahomedan law of Inheritance and Succession if they so desire by declaring themselves desirous of obtaining the benefits of the Cutchi Memons Act, 1920, as amended by Act XXXIV of the Amending Act of 1923. After such declaration the above Act provides that the declarant and all his minor children and their descendants shall be governed by the Mahomedan rules of succession.

From the above we see that those Mahomedan women who are governed by the Mahomedan law are accorded greater rights of succession and inheritance than those accorded to the women—Hindu and Mahomedan—governed by the Hindu law of succession and inheritance Under the Mahomedan system of succession, females co-existing with males of the same degree, or of a lower degree can inherit though they get a smaller share. But

under the Hindu Law (excepting in the case of Stridhana) a female's right is always postponed in favour of that of a male Moreover, under the former, a women's control over inherited property and power of desposition are much greater than under the latter When a woman is governed by Hindu law of succession she has but a very limited interest in the property inherited from a male except when she is governed by the Bombay school and she inherits in the category of a daughter, whereas a Mahomedan woman acquires an absolute and indefeasible interest in the property under the Mahomedan law

We shall, now deal with the case of Buddhist women The Burmese Buddhist law, it seems, is very complicated so far as its branch on succession and inheritance is concerned The reason is that it divides the property into various denominations and different rules are provided for each such kind of property

We shall first deal with the separate property of a Buddhist male. The rule is that on his death the first heir is his widow and not any of his children except an eldest son or a daughter who is technically known under the law as an Orasa, who takes a one fourth share of the estate But, this one fourth share is not to be taken by him or her so long as the widow is living It is only after her death that he or she is entitled to it. Further, the three fourth share which devolves upon the widow is her absolute property to do what she will, but she has no right to dispose of the one fourth share even in case of necessity However, she takes it (the estate) subject to specific rights of others. If her husband dies without any children she succeeds to the whole of the deceased's estate including even the right of the deceased to share in undivided ancestral property

Next, as to joint property The joint property that has here to be dealt with is a peculiar feature of the Burmese Buddhist law Under the law, married persons hold during the subsistence of the marriage an interest in all property belonging to either or both Both the parties hold this property as tenants in common Partition of this property takes place either on death or divorce. It is here that the complexity arises, for the extent of the

right to this joint property depends upon the particular kind of property under division. Therefore, it is worth our while to know the different kinds of it. The Buddhist Law mentions three kinds of it "Paym" which is the property which had belonged to the spouses individually before marriage, "lettetpwa," which is the property accruing to either spouse individually either by particular exertion or by succession after the marriage, sometimes, therefore, described as of two kinds, viz., ordinary lettetpwa and lettetpwa by succession, and thirdly "Hnapazon" which is the property acquired by the spouses during the marriage by their exertions or from the produce of the property they already have On partition, lettetpwa goes two-thirds to the spouse who actually made it or succeeded to it and one-third to the other. Hnapazon and paym are equally divided. This being the law, if a partition takes place on the death of a Buddhist husband, the widow takes her share in the joint property as stated above, the other, though it passes to her husband's children after her death, remains under her control with a life-interest in it and also with a power to dispose of it in case of necessity provided she does not remarry. If she contracts a second marriage she takes away the property falling to her on division with her but the remaining part goes to the children of her first husband.

As regards a Burmese-Buddhist daughter, though she is not excluded in the presence of a male issue *prima facie*, she is not an immediate heir to her father. It is only in the absence of her mother—the widow—that she takes an equal share in the estate of her father with only heirs either male or female. But if the widowed mother remarries, the share that has fallen, on division, to her father's side, devolves upon her and her brothers and sisters if there are any.

However, she is an immediate heir to her mother and takes an equal share as she does to her father's estate who dies leaving no widow. Also, her personal law provides that when the mother dies and the father remarries, a family partition is to take place and the children of the first marriage get the share of their deceased mother.

XVII

WOMEN'S STATUS IN GENERAL.

HAVING finished the survey of the legal rights of women under the various communal laws in vogue in India, it will be worth our while to record certain general impressions that are left upon our mind by it. In the first place, one cannot but say after going through the pages of this thesis, that the position of the most of the Indian women, particularly those governed by the Hindu and the Mahomedan laws, leaves but a sorry impression on the minds of the readers. Though the other laws that govern the Parsee, (except the law of succession of the Parsee women) Christian and certain Hindu, Jain, Buddhist and Sikh women married under the Special Marriage Act as also the Buddhist women in general and women governed by the Marumakattayam Act, are to a great extent just and liberal, these women being in a great minority as compared with the other section, the superior position of them does not affect the general position of women of this country who are mostly governed by the Hindu or the Mahomedan laws and who form a great majority of the women population of India. This remarkable and striking difference in the legal status of the Hindu and Mahomedan women governed by the Hindu and the Mahomedan laws respectively, on the one hand, and the rest of them governed by the other laws on the other, is due to the fact that the Hindu and the Mahomedan laws are mostly based on religious texts and customs, old and obsolete and completely out of tune with the present day conditions and requirements while the latter laws (except the Buddhist law) are adopted more or less after their respective social necessities and social opinion of the current era. However, if we want to rank the women of different communities according to their real status in law, we cannot do so without doing injustice to one or the other communities The reason is obvious. The only thing that we can do is to say without hesitation that it is the Hindu women governed by the Hindu

law that are labouring under legal disabilities the most, the Mahomedan women coming next after the Hindu ones

This inferior legal position of the Hindu and Mahomedan women has generated and still continues to generate many evils of their kind and much hue and cry is raised both in the press as well as on the platforms, also in the Indian Legislatures by social reformers, to eradicate those evils. Necessity is felt in every quarter for removing this inferior legal status of these women and of placing them on a higher and more equitable level Different methods are being suggested by different writers and social reformers and often discussed in the press and on the platforms Some suggest certain modifications in the laws concerned, others suggest certain innovations to be introduced in them and there is a section of most advanced and radical views, which asks for a fundamental change in those archaic laws of a rotten edifice and insist on the introduction of new and living systems based on principles which are just and equitable and which can satisfy the needs and requirements of the present day

But these are questions which require a careful and a thorough inquiry and study of the laws governing the present day society and a general awakening of the public conscience before the legislature is moved to act in the forward direction During this transition period what a social reformer can do is to make the public acquainted with the present state of laws governing it and further to bring to its notice the benefits which other legal systems accord to the societies in which they are in vogue This he can do with a view to drive away the prejudices which the majority of the members of any given society is generally suffering from and to shape the public opinion in the right direction.

With this end in view, the present humble endeavour is made A reader will find in it what women are labouring under disabilities (of course legal) and to what an extent. He will also find, in the same, what women are equally placed in law and that will enable him to judge for himself how far this equality of rights raises the legal as well

as the social status of those women The setting out of the legal positions of women of different communities in juxtaposition will, we hope, enable the reader to know how extensive is the field of social reform in India

Lastly, a word about the Special Marriage Act The principle of equality of status and of rights between males and females is being universally recognised now and in India the only piece of legislation that observes this principle in most of its aspects is the Special Marriage Act, though less than the Burmese Buddhist Law All these males and females who are governed by the Act are placed on an equal level having equal rights and equal disabilities Sex distinction is not to be found at all in the Act except for Divorce Over and above its recognition of the principle of equity and equality, it is one of the most up to-date Acts that can satisfy to a great extent, the social necessities and requirements of our Society as it is constituted to-day And we, on our part, with all the emphasis, request those who have the cause of social reform at their heart, to direct and exercise their energies in making the various benefits of the civil marriage under the Special Marriage Act, widely known among our people by all the means at their disposal and to get it applied to those communities that do not come under the purview of it. We are confident that if this be done, social reform will be a reality rather than a mere diffusion of ideas. The most that will be benefited by it will be our womenfolk who have been labouring under legal disabilities since centuries. It will raise their legal and along with it the social status, especially in the eye of the husband, to a high pedestal because the Act would prove radical in striking at the root of those disabilities that have unjustly and inequitably suppressed millions of our Indian sisters, particularly the Hindu and the Mahomedan ones.

In the end, we humbly but most earnestly appeal to the general public of this country to avail themselves of the various benefits of civil marriages, at least so long as their personal laws do not incorporate the principle of complete equality between the sexes, though we per

sonally think that the Special Marriage Act should be mad
the general law of the communities of India except th
Buddhists. If it is made so, it would remove many dis
abilities of the Hindu and the Mahomedan marriage amon
other things. It would also clarify the issue of inheritanc
and succession which presents many difficulties an
complications under the Hindu law and would, in its turn
save enormous sums of money that the Hindu communit
waste after litigation. In short, the simple and short cod
would set everything right and would blot out the lega
disabilities of the women who are not governed by it a
present.

END

APPENDIX

THE LATEST LEGISLATION IN JAMMU

A NEW Regulation, legalising marriages of Hindu widows to be known as the "Hindu Widows' Remarriage and Property Regulation, has been enacted in Jammu State in April 1933, which will come into operation at once

LEGALISING MARRIAGES.

The Regulation provides that no marriage, contracted between Hindus, shall be invalid, and the issue of no such marriage shall be illegitimate by reason of the woman having been previously married, or betrothed to another person who was dead at the time of such second marriage, any custom and any interpretation of Hindu Law to the contrary notwithstanding

RIGHTS TO PROPERTY

All rights and interests, which any widow may have in her deceased husband s property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary deposition conferring upon her without express permission to remarry, only a limited interest in such property with no power of alienating the same, shall, upon her re marriage, cease and determine, as if she had then died, and the next heirs of the deceased husband or other persons entitled to the property on her death, shall thereupon succeed to the same

GUARDIANSHIP

If, on the re marriage of a Hindu widow having children of whom she has not been expressly constituted, by the will or testamentary deposition of the deceased husband, the guardian of his children but is the natural guardian or one appointed by the court, a claim to their guardianship should be made by another person, the matter shall be decided by a petition to the District Judge,

who shall be guided in retaining the mother guardian o making another appointment, according to the best inte rests of the minors, without reference to the preferentia rights of the mother.

INHERITANCE.

Except as provided in the two preceding sections, a widow shall not, by reason of her re-marriage, forfeit an property or any right to which she would otherwise b entitled, and every widow, who has remarried shall hav the same rights of inheritance as she would have had, ha such marriage been a first marriage.

REMARRIAGE.

If the widow re-marrying is under 16 years of ag whose marriage has not been consummated, she shall not be remarried without the consent of the father, or if sh has no father, of her paternal grand-father, or if she ha no such grand-father, of her mother, or failing all these of her elder brother, or failing also her brothers, of he next male relative.

CONSENT

It is specifically provided in the Regulation that in the case of a widow who is not under 16 years of age, o whose marriage has been consummated, her own consent shall be sufficient to constitute her remarriage lawful and valid.